

# Jog

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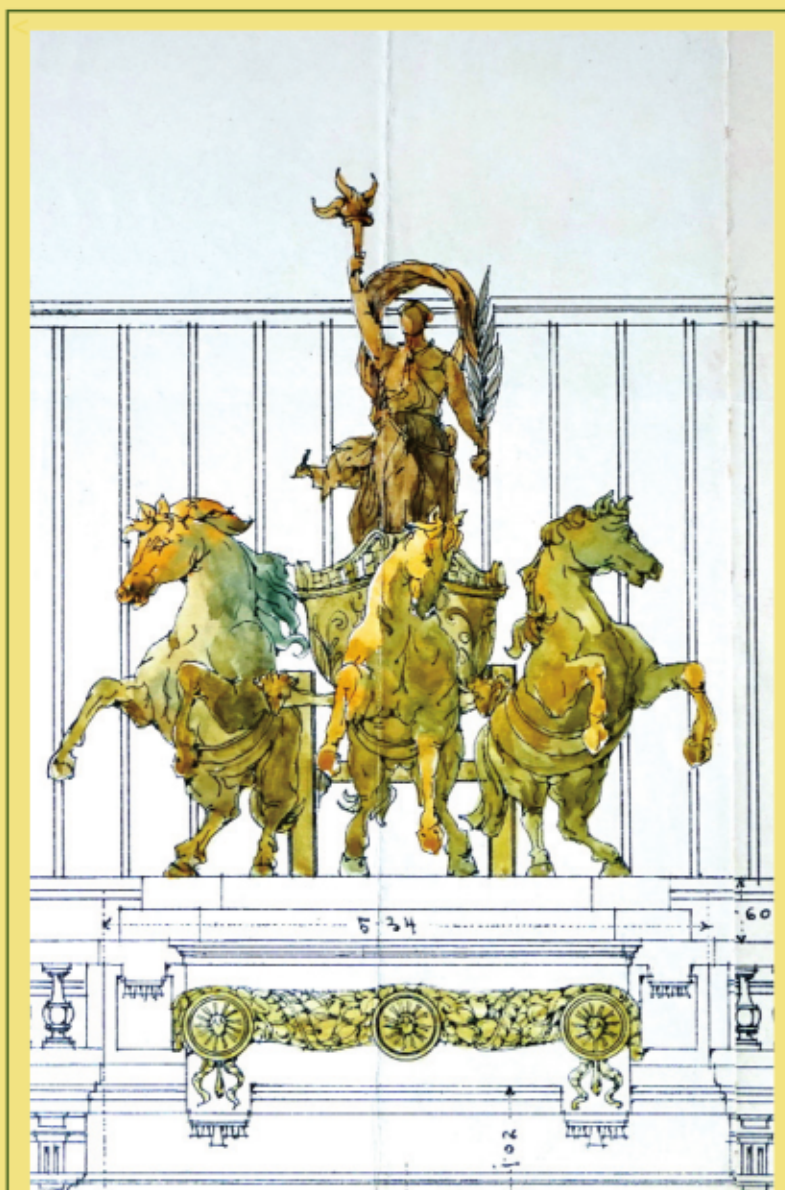
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*Triga on the building of the Royal Curia*

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*On the front page:*

**Triga on the building of the Royal Curia, designed by Alajos Hauszmann**

Sculpture (and this sketch drawing) made by Károly Senyei

Országos Bírósági Hivatal, Műszaki Főosztály Irattára [National Office for the Judiciary, Technical Department Archives]

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The research of the history of the Hungarian Royal Ministry of Justice poses a major challenge due to the destruction of the files in the central national archives in 1956. In this paper some brief chapters, that can be considered important from among the remaining fragmentary material, are highlighted.<sup>1</sup>

## 1. World War I

### 1. 1. Some of the first confidential regulations

At the beginning of World War I, Jenő Balogh, Minister of Justice,<sup>2</sup> issued several confidential instructions on the measures to be taken in the event of an enemy invasion. Among these, confidential Decree No. 115/38 of 25 August 1914, which was referred to many times, thereafter, was about handling and securing valuables and official documents in case of public danger. The minister himself or the chief official of the municipality (the mayor or the sub-prefect) could order this briefly with the following words: “State assets must be secured.” The material scope of the decree covered judicial presidential deposits, valuable corpus delicti and objects, securities, cash, documents handled as attachments to accounting logbooks, as well as the list of fortresses and secret telegraphic number keys. In case of danger, the head of the authority took the sum needed for transportation from the cash office, which sum was recorded in the book of receipts and expenditures as a separate entry, and then the assets mentioned had to be transported to the state treasury of District IX in Budapest by post, ship, or rail, or otherwise if it was not safe in this way. In emergency, these possessions and documents had to be hidden. A similar rule applied to land registry maps, records, and deposits, as well as to unproclaimed last wills, in order to “protect them from destruction”, and special attention had to be paid to looking after properties which had to be abandoned. If there was no time for this and the officials were forced to hand over documents during a direct attack, an attempt had to be made to obtain an acknowledgment of receipt or other evidence (e.g., witnesses). Once the public danger had ceased, the Ministry had to be notified immediately.<sup>3</sup>

Confidential Decree (Circular) No. 115/56, which regulated the conduct of criminal authorities in the event of imminent danger, also proved to be important in practice. In case they were compelled to leave their office, they had to try to prevent the detained “criminals dangerous for the public” from deserting to the enemy, and for this reason they had to be transported to a secure detention facility. If this was not possible, at least persons in pre-trial detention, those convicted in an accelerated criminal procedure,<sup>4</sup> work-shirkers dangerous for the public (Act No. 21 of 1913), those interned by the authorities as “unreliable or suspicious persons”, as well as those convicted for more than six months, if more than one month was left from their imprisonment, had to be transported. The others, however, had to be released and a statement was to be prepared. For this to happen, up-to-date records of

Antal, Tamás

## Fragments from the Work of the Hungarian Ministry of Justice during the World Wars

these two groups of prisoners were to be kept in advance, in the prison where they were taken, all the suitable rooms could be used, not just cells. It was the prison governor’s duty to ensure that the persons who had served their sentence in the meantime were released; as regards pre-trial detainees, it was the territorially competent royal prosecutor who decided whether to extend pre-trial custody, of which the competent chief royal public prosecutor was to be informed in a report.<sup>5</sup>

Otherwise, Government Decree No. 7 364/1914 governed the case if a judicial authority was *forced to cease* its normal operation due to the war. In this case, its seat was to be left “in a calm, orderly manner and not in a fleeing-like way”. If possible, the retreating organ remained in the vicinity of the occupied area to reclaim its seat as soon as possible.

*“When leaving and returning to the seat, the two important aspects to be reconciled are: on the one hand, to prevent the enemy from exploiting the authorities for their own benefit and, on the other hand, to make sure that the population in the authorities’ territory is deprived of the operation of the Hungarian authorities for the shortest time possible.”*

– the decree stated. The organ forced to leave was obliged to continue supporting the population in the occupied territory, reassuring them in the knowledge that “they are not completely abandoned by the Hungarian authorities”.<sup>6</sup> However, there were some special circumstances: the Ministry of Justice found several supplementations desirable for the areas of the tribunals of Braşov [Brassó], Miercurea Ciuc [Csíkszereda] and Târgu Secuiesc [Kézdivásárhely]. First, prosecutor’s offices were supposed to handle the documents of crimes of political nature separately for ease of transportation; second, the confidential circulars by the Minister of Justice and the chief public prosecutors regarding the war, the secret telegraphic number markings, and the documents of the Hungarian–Romanian Joint Committees were also to be collected for security purposes.<sup>7</sup>

Simultaneously with sending the first declaration of war, on July 28, 1914, the Minister of Justice instructed

the chairmen of the tribunals how to proceed in the matters of mobilization and the resulting staff shortages,<sup>8</sup> yet soon after the outbreak of war, from October 1914, the administration of justice wavered in the counties afflicted by the invasion of the enemy forces. Reports kept coming from the north-eastern and southern regions of the country about district court judges being forced to leave their places of service. The chairmen of the royal tribunals (*királyi törvényszékek*) and Courts of Appeal (*ítélőtáblák*) concerned gave dramatic reports on the commotion caused by the war, for instance, in the district of the Court of Appeal in Košice [Kassa] or in the area of the Sighetu Marmăției [Máramarosziget] tribunal. The work in prosecutor's offices also faltered: from Transylvanian reports, the Ministry was informed of temporary "closing procedures", particularly for the purpose of saving files and the managed funds.<sup>9</sup> Real heroes were involved in this activity, not only prosecutors and judges, but also administrative office staff, junior clerks, and prison guards, who stood their ground and made it possible for the administration of justice to continue working. Many of them were nominated for the highest class of the Civil Military Cross of merit.<sup>10</sup>

## 1. 2. In the escalation of the war

As World War I and the occupation of certain territories of Romania progressed, the obstacles to the work of civil courts there multiplied if one of the parties was a Hungarian native. The Minister of Justice was continuously informed about this, and eventually he notified the Prime Minister that action had to be taken against the functioning of the Romanian courts to ensure impartial judgment. The analogy of the Austro-Hungarian consular jurisdiction was raised as a possibility,<sup>11</sup> but it was rather the organizational solutions applied in the Romanian, Serbian and Polish territories occupied by the Germans which were considered as a guiding example. Accordingly, in June 1917, with the mediation of the joint Ministry of Foreign Affairs of the dual monarchy, it was agreed that Hungarian and Austrian natives would be subordinated to the German civil courts to be established besides ordinary tribunals, which would apply Romanian substantive law but German procedural law, while Romanian citizens could continue proceeding before their own courts. If, nevertheless, the Hungarian party litigated before a local court, the so-called General Governor (*főkormányzóság*) appointed a commissioner officially to protect his or her interests.<sup>12</sup>

Similarly, in 1917 the Minister of Justice called upon the chairmen of some Courts of Appeal to propose *judges speaking Romanian* to be sent to the occupied Romanian territories. The transcript reveals that similar measures had already been taken in Serbia. Upon the proposal made by the chairmen of the Courts of Appeal in Szeged and Timișoara [Temesvár],<sup>13</sup> Béla Suszter, chief district court judge in Caransebeș [Karánsebes] and Rezső Wanie, tribunal judge in Szeged were assigned to the Romanian economic staff of the military administration in Bucharest, where they were appointed economic high commissioners

in August, whereby they were classified in a lower official payment category than in their courts. As they found it injurious, the president of the Court of Appeal in Timișoara asked the Minister to reclassify their position as civil commissioner, thereby receiving the same remuneration as their colleagues sent to Serbia or, if this was not possible, to enable them to return to their original place of employment. The imperial and royal military headquarters, contacted in the meantime, declared that they had no objection to the reclassification. However, a few weeks later, at the end of September, the president of the Court of Appeal of Timișoara informed the Ministry that Béla Suszter wished to return home, an initiative that he himself also found to be worth supporting in the interest of the administration of justice, so Suszter was relieved of external service in early December.<sup>14</sup> A similar event happened later: in October 1918, the Romanian Compensation Office (*Kártalanítási Hivatal*) needed trustworthy judges or scribes with a good command of the German, Romanian and French languages as civil commissioners sent from the districts of the Szeged, Oradea [Nagyvárad] and the Transylvanian Courts of Appeal on a voluntary basis. It is not known whether this finally happened, but each Court of Appeal president suggested a suitable candidate.<sup>15</sup>

Meanwhile, in order to coordinate border measures made necessary by the worsening war and by the Romanian attack against Transylvania, in April 1917 the Minister of the Interior requested that a royal prosecutor, who could speak Romanian, should be summoned to him, and Kristóf Fehér, the chief prosecutor of Lugoj [Lugos], was appointed for this in a short time. However, there was dispute over the legal way of doing so, because his summoning to the Ministry of Justice and then his transfer to the Ministry of the Interior would have ceased his actual service as prosecutor and thus his leadership supplement, too.<sup>16</sup>

Needless to say, the Ministry itself suffered losses during the World War, as also known from a report written by Cyrill Karap, head of the audit office, in October 1917. Due to the high number of enlistments, the frequent assignments to the National Military Aid Office (*Országos Hadsegélyező Hivatal*)<sup>17</sup> and the implementation of several new government decrees issued in parallel, the audit office found itself in a critical situation, which was illustrated well by the fact that the closing account for 1915/16 was completed one year after the statutory deadline. The severity of the shortage of appropriate professionals available is also shown by the lengthy correspondence between the Ministry of Justice and the Military Aid Office in the autumn of 1917 regarding the further assignment or summoning back of one particular auditor, who had served in the Office since March 1916, and at the time mentioned both organs considered him indispensable and demanded his service.<sup>18</sup>

### 1. 3. In the months of the endgame

The battlefield events in the autumn of 1918 prompted Gusztáv Tőry, Minister of Justice,<sup>19</sup> to contact the judicial authorities again on 3 October, regarding the procedures to be followed in the event of the arrival of the enemy forces. The district courts had to prepare themselves again for safeguarding the land registry documents by using their experience acquired so far, and to this end they had to send reports to the president of the Court of Appeal in Târgu Mureş [Marosvásárhely] and to the Ministry on the exact content of the boxes, among others. Their actual transportation could be ordered by the Minister himself or by the Government Commissioner for Transylvania, who also named the destination (Arad, Oradea or Debrecen). The above-mentioned confidential instructions of 1914–15 governed the securement of other valuables.<sup>20</sup> The files from the courts of the already occupied southern part of the country had to be taken to Szeged, but on 9 November only a few boxes from the Oravița [Oraviczabánya] district court and from the Bela Crkva [Fehértemplom] courts arrived there. Their handing over is known to have happened in such a way that the office manager of the tribunal received the official boxes together with the list of their content from the escort employee and arranged for their placement, the transportation and delivery costs were advanced by the president of the Court of Appeal himself from the general office expenses.<sup>21</sup>

In November 1918, in the midst of inevitable defeat, the Government had to take measures on what should generally happen concerning the work of the Hungarian courts in parts of the country already occupied or to be occupied by the enemy. According to the decision made in the Council of Ministers and communicated through the chairmen of the Courts of Appeal, all the judges and the officials had to remain in their place of service and, as far as possible, “to endeavour” to cooperate with the Romanian and Czechoslovakian national councils, but they could take an oath or pledge to them only if there was no way out, under pressure. According to the ceasefire agreements of 3 and 13 November 1918, the Hungarian organs (would have) performed the official tasks until concluding the peace treaty, thus the occupation itself did not qualify as a certain reason for stopping their work, what is more: public administration and the administration of justice had to be maintained to prevent the occupying powers from taking them over on the ground that the Hungarian organs were not functioning. If the circumstances did not allow this – particularly if the officials’ lives were endangered when remaining in their office – the provisions described above applied to securing valuables and various files as well as to the transportation of prisoners. The reports made by the chairmen of the Courts of Appeal in Szeged and Oradea revealed that some of their employees had already left for an unknown place, and furthermore, the occupying troops regularly prevented the continued operation of the Hungarian organs despite the ceasefire agreement. The situation was further aggravated because the various ministries gave different instructions to the subordinated

offices, and because no order that could be enforced in all parts of the state could be issued.<sup>22</sup>

Therefore, the Minister of Justice took the view that, despite the capitulation, the operation of the Hungarian government organs had to be coordinated as much as possible. However, there were different views in the Ministry as to how this should be done. There were some who regarded the so-called ceasefire committee of the Entente to be most suitable for dealing with these tasks, while others did not find it appropriate because of its composition. According to the knowledge of Vilmos Pál Tomcsányi, undersecretary of state in the Ministry, the head of the French committee arriving in Budapest to determine the details of the ceasefire held out the prospect of remedying the grievances caused by the obstruction of the work of the Hungarian judicial authorities, and thus he assumed that there would be no need to take specific action about the existing disturbances. However, Dávid Rosnyai, rapporteur, held the view that an interdepartmental meeting was needed in the Ministry to decide the problematic questions.<sup>23</sup>

According to a report by the Ministry’s audit office, the salaries for December 1918 were remitted to the heads of tax offices which were located inside the demarcation line and not threatened as larger advances for receipt and subsequent settlement, who then collected these sums personally or through their representatives and distributed them themselves to judicial officials, servants, pensioners and persons entitled to military aid against a receipt – e.g. the sums due to Pančevo [Pancsova] and Novi Sad [Újvidék] were sent to Szeged, the salaries for the employees in Sânnicolau Mare [Nagyszentmiklós] were remitted to Makó –, while the salaries for those who had been forced to leave their places of service were sent to the (still) Hungarian state tax office where they had requested. Pursuant to a Council of Ministers resolution which was passed in 1915 but promulgated only much later, those who were trapped outside the demarcation line – provided that they had left their office for good reason – were to receive their salaries and travel expenses similarly by means of so-called travel accounts endorsed by their office superiors. It is not known whether this was actually effected; however, the Government of the proclaimed Hungarian People’s Republic<sup>24</sup> issued an official call in December 1918, in which civil servants were called upon to retain their post of service if possible, and in the case of their departure, to wait for the order of their superior authorities in their new places of residence, making their salaries dependent on this.<sup>25</sup>

The People’s Republic of 1918–19 mentioned was proclaimed on 16 November 1918 – after the revolution in Budapest on 31 October –, and it was terminated on 21 March 1919. It used to be a democratic state and not a communist one led by count Mihály Károlyi and his Government. This unfortunate period was the time of the armed intervention by several Central European states (Czechoslovakia, Romania, Serbian–Croatian–Slovenian Monarchy) onto the territory of Hungary.

Meanwhile, Ágoston Ráth, Commissioner of Justice of *Narodna Uprava* (Serbian People’s Administration)<sup>26</sup>

in Banat [Bánát], Bačka [Bácska] and Baranja [Baranya], stated in early December that he was willing to continue employing Hungarian judges and prosecutors from Délvidék [Southern Territories] in their office with “certain” reservations (and also to allow Hungarians to use their mother tongue in court) if those concerned asked for their relocation through their office heads and if they took an oath and pledged loyalty to *Narodna Uprava*. The Hungarian Government protested this, with reference to the contents of the ceasefire agreement, and instructed judicial officials not to make a statement before the eight-day deadline but to bide their time until the two states came to an agreement. In his circular dated 12 December, Dénes Berinkei, the Minister of Justice in office, ordered that in case they took an oath to the Serbian empire under direct pressure, the People’s Republic would not hold it against them later.

In January 1919 the president of the tribunal Subotica [Szabadka] informed the Hungarian Government that biding time had led to no result; those who did not take the oath of allegiance could not receive their salaries in the tax office which had come under Serbian jurisdiction, and neither could they get to the unoccupied territories because travel certificates were rarely issued by the Serbian–Croatian authorities, moreover only overprinted banknotes were accepted in the occupied territories. *Narodna Uprava*’s Commissioner of Justice himself realized that the Hungarian state had only been playing for time, therefore he did not agree to any further postponement of pledging loyalty, instead, he declared that “he was going to resort to force”. So, through a secret envoy, the president of the tribunal asked for instructions on what to do.<sup>27</sup>

The staff and operation of the Hungarian judicial authorities which were already in the territory of Czechoslovakia faced similar obstacles. In January 1919 Dénes Berinkei, Minister of Justice, commissioned Ödön Polner, professor of constitutional law<sup>28</sup> and Rector of the University of Bratislava [Pozsony], to negotiate on behalf of the Hungarian Government, and he intervened and conferred with Ambassador Milán Hodzsa so that the provisional Slovakian Ministry operating in Žilina [Zsolna] would refrain from soliciting oath-related claims from the judicial staff for the time being. By that time, however, Polner and other university professors had already been taken into police custody by the Czechoslovak authorities, its termi-

nation was requested by the Hungarian Ministry of Justice on 31 January,<sup>29</sup> but the archives do not reveal whether it was successful. According to Polner’s memoirs, he was

taken into custody only on 4 February, several days after he had returned home from Budapest, and it lasted for only one day in a Franciscan monastery; but it is a historical fact that the prefect (*zsupán*) there suspended the operation of the University of Bratislava temporarily and ordered police surveillance for the teachers. Polner did not mention whether he had eventually completed a special diplomatic mission for the Hungarian state at that time.<sup>30</sup>



Ödön Polner (1865–1961)<sup>31</sup>

## 2. World War II

### 2. 1. The integration of the reoccupied former territories

As a result of the “Vienna Awards” (1938, 1940), on the one hand, the administration of justice had to be maintained, and on the other hand, the Hungarian state legislation had to be organized again in, as called

officially, the territories returned to the Holy Crown of Hungary, which was the responsibility of the Ministry of Justice and the Government. The first relevant decree entered into force on 28 October 1938.<sup>32</sup> In the territories of Upper Hungary [Felvidék], Transcarpathia and Transylvania concerned, the procedural rules of private law, civil and non-litigious proceedings in force there at the time of their re-annexation – namely on 1 January, 27 June 1939, and 26 November 1940, respectively – were generally maintained, while in criminal justice the Hungarian law had to be applied. The commencement of the operation of the Hungarian courts entailed that the ongoing deadlines were interrupted and restarted, and the time interval between the dissolution of the Czechoslovakian and Romanian courts and the beginning of the operation of the Hungarian forums was not included in the limitation period. The Court of Appeal in Košice was re-established in 1938, while the ones in Cluj [Kolozsvár], Oradea and Târgu Mures [Marosvásárhely] in 1940. The organization was mostly carried out on decree level in view of swiftness and Hungarian traditions<sup>33</sup> as well as the war-time public law conditions as of September 1939. These rules of law are so numerous that only their listing would be beyond the scope of the present study.

The judicial integration of Southern Territories [Délvidék] occupied in the spring of 1941 also took place by this

analogy.<sup>34</sup> Entering World War II in April 1941 resulted in the occupation of the so-called Southern Territories, which then belonged to Yugoslavia according to the Treaty of Trianon (1920), and in its *de facto* re-annexation to the motherland within a few weeks. However, the public law aspect of all this required much longer time: it was only at the end of the year that the Governor, Miklós Horthy promulgated Act No. 20 of 1941, which – by analogy with earlier similar laws<sup>35</sup> – was necessary for the unification of the country in the public law sense. As regards the restoration of Hungarian jurisdiction and citizenship, the theoretical date of 11 April 1941 was set by Parliament, while leaving the elaboration of all the details of the act in question to regulatory provisions by the Government and the Ministers – including the operation of the judicial organs and the aspects of the concrete laws to be applied. Thus, partly the reinstatement of the force of the former Hungarian rules of law, which did not require new legislative acts, and partly the extension of the territorial scope of the newly created Hungarian legal norms as well as the implementation of several provisional rules of law were realized during 1941 and 1942.<sup>36</sup>

For example, as of 16 August, 1941, the provisional organizational norms re-established the *royal tribunals* and public prosecutor's offices in Subotica, Sombor [Zombor] and Novi Sad [Újvidék], as well as several district courts in these areas, most of which were assigned to the district of the Court of Appeal of Szeged.<sup>37</sup> In Novi Sad, an independent bar association was also set up.<sup>38</sup> In private law disputes, regulated by the Code of Civil Procedure of 1911<sup>39</sup> and the act on its entry into force, generally the Hungarian law came into force – at the same time as the Hungarian courts became operational.

In the re-annexed territories, the newly created or already existing Hungarian courts took over the cases which were still pending before a Yugoslav court at the time of its dissolution, or which were in progress before a judge appointed by the Hungarian military authority. Exceptions were the cases which belonged to administrative authorities under Hungarian law, those which did not fall within the scope of jurisdiction of the Hungarian state organs under private international law, proceedings taken by or against the Yugoslav State, and finally, proceedings taken by or against other public bodies or public institutions which could be replaced by another person/organ as a result of the change in state authority. Cases in which new proceedings could be initiated were settled by the Hungarian court replacing the competent Yugoslav court even if otherwise it did not fall within the scope of its jurisdiction or competence under the Hungarian procedural law.<sup>40</sup>

Military criminal justice exercised temporarily over civilians in the Southern Territories ceased on 3 August 1941. As from the following day, criminal cases against civilians were heard by ordinary criminal courts unless the proceedings – pursuant to special law – belonged to the competence of the military criminal court in other parts of the country as well. In cases where the Yugoslav courts had already made a final judgment before 11 April 1941 and no new criminal proceedings could be initiated,

or such proceedings had not yet been initiated before the Hungarian judicial authorities, the person who had been convicted by the Yugoslav court could request the competent Hungarian tribunal (district court) to declare that he/she had not committed the offense that he/she was accused of, or that his/her conviction had not been in accordance with the legal conception of Hungarian law. If the Hungarian court subsequently found that the applicant had not committed the criminal offense that he/she was accused of in the previous judgment, or that his/her conviction had not been in accordance with the legal conception of Hungarian criminal law, the convict would not suffer any further prejudice on account of the decision of the former Yugoslav court. The Hungarian court could also declare that the judgment of the Yugoslav court was legally invalid in Hungary and it made a new decision instead. If there was any doubt as to the nature of the territories during the application of the temporary rules, the court or the public prosecutor's office was obliged to turn to the Minister of Justice.<sup>41</sup>

The Hungarian rules of 1914 regarding the administration of courts and royal prosecutor's offices<sup>42</sup> also entered into force in the Southern Territories on 1 January 1942, with minor temporary amendments. Many requested to be relocated to the regions re-annexed to the country no longer than the turn of 1944 and 1945.

## 2. 2. Propaganda and the administration of justice

At the end of 1940, the Service for National Policy (*Nemzetpolitikai Szolgálat*), which was organized at the Prime Minister's Office, strongly asked the ministries that, within their competence, their leaders should send information twice a month on “any measure which, directly or indirectly, promotes the material or moral benefit of any social stratum of the nation”. The Service for National Policy intended to publish the received material in a bimonthly publication on the operation of the state and municipalities as well as the agencies and institutions under their supervision. The publication “aims to tell and inform the broad spectrum of the Hungarian society about the operation of the Government, thus promoting the development of a correct public perception” – as stated by László Radocsay, Minister of Justice about the aim to be achieved, therefore in December 1940 he ordered that the head of each department should communicate the information in writing to the presidential department of the Ministry until the 1st and 16th day of the month, which was then forwarded to the Service.<sup>43</sup> The propaganda publication was published from January 1941 under the title *Országépítés (Landbuilding)*. As a periodical bulletin all together it had 90 issues between 1941 and 1944 according to the database of the Library of the Hungarian Parliament.<sup>44</sup>

It was also in the first month of 1941 that Prime Minister Pál Teleki made the following, strictly confidential appeal to Radocsay:

*“in order to effectively support the foreign information work of Department IV operating under my direct supervision within the framework of the Hungarian Royal Prime Minister’s Office, it is necessary that the ministries and other bodies regularly provide the Department with all the information that, after proper processing, can provide foreign countries with favourable information on Hungary, its domestic situation, foreign policy, development, nationality policy, economic and technical achievements, measures to promote increased production, etc.”*

Teleki also considered it advisable for the Ministry of Justice to inform the Prime Minister’s Department of Information regularly, preferably on a weekly basis, of “the relevant decrees and the political, cultural, economic etc. measures,” issued within its competence, “which demonstrate the advancement and steady development of Hungary” on the one hand and can portray Hungarian nationality politics in a good light on the other. Furthermore, he also found it necessary that the statements – made by nationalities, persons belonging to them and their leaders “which reveal that the situation in Hungary and the measures of the Hungarian Government elicit recognition and friendly feelings among our minorities” – should also be reported to the Prime Minister’s Office regularly. To this, a ministry rapporteur was responsible for direct contact, and the compilations prepared for the Service for National Policy had to be sent to the Prime Minister, too.<sup>45</sup>

Radocsay was also contacted directly by Alajos Alföldi, Head of the Service, who pointed out:

*“it seems particularly useful [...] to disclose the ordered investments, facilities and the costs spent on or allocated to these, so that the public activities of the state that are less known but of great interest to the public can also be publicized”*.

He was explicit in pointing out that the aim was to make it appear that, despite the wartime conditions in the country, “the rate of material and moral value production continues to be vibrant and, in contrast with any other continental state, the standard of living and the possibilities of obtaining basic commodities barely decreased”. The reports had to be submitted so that the data would be available to the Service on the 4th and 19th day of each month.<sup>46</sup> For example, the family law department of the Ministry of Justice issued its first report on 3 January 1941. In this, Miklós Staud, Head of Department, used this radical metaphor, among others:

*“in the field of family law, the Government is driven by the clear realization, or even certain knowledge of the fundamental doctrine of state that the core unit of the state is the family based on marriage blessed with profound moral content, enduring solidity and natural reproduction. [...] A man who remains unmarried, a woman who is averse to serious, stable marriage can only be regarded as a white blood cell and treated ac-*

*cordingly by the state with respect to governance, the proliferation of which white blood cell would cause the state to be mainly morally, but also economically and ultimately physically ill and extinct.”*

The Ministry’s usual approach in judging requests for exemption from marriage impediments was that it proposed to refuse permission only if its issuance would raise a serious moral or public health issue, or “if the marriage would only serve as a pretext or an opportunity for a foreign person to settle down in the country whose settlement was contrary to public interest”. The judicial administration also supported starting a family through legal guidance and the “warm embrace” of adoption; besides, it sought to provide for the “legally forsaken”: the illegitimate children through securing pardon by the Governor.<sup>47</sup>

### 2. 3. Regulations on the Jews’ properties

The previously quoted report typically shunned the contradiction between anti-Jewish legislation and the above goals. In contrast, the Jews were very much focused on in the informative anonymous commentary on the government decree<sup>48</sup> regulating the payments on dismissal and remunerations of similar nature paid to private employees dismissed or to be dismissed as a result of the so-called “Jewish laws” (1939–42) based on German examples.<sup>49</sup> The reason for its issuance was that persons who were classified as “Jews” and excluded from employment were paid large amounts of severance pay by the economic companies concerned, which was found quite injurious by the Council of Ministers, which made it compulsory to declare the emoluments paid in this way: “in reality, several companies were rather willing to risk collapse, displacement from production, but they wanted to compensate the dismissed Jews abundantly for life”. The Government took measures to “protect” movable capital by limiting the extent of severance pays, bonuses and private pensions.

To this end, the Supervising Authority of Public Interests (*Közérdekeltségek Felügyelő Hatósága*), formerly established in 1933, was authorized to rectify payments that thus became unlawful, even *ex officio*, or retrospectively, to the allowed extent, and to sanction the leaders of companies providing excessive payments. The scope of the regulation did not cover employees receiving wages below five hundred *Pengős* a month, cynically classifying it as the “consideration of social aspects”.<sup>50</sup> This briefly outlined document was clearly just a law extract, but it portrays vividly how the legal and economic dimensions of antisemitism were widening and how a part of the society was trying to resist this with its own means before the country entered the war. Incidentally, by the end of 1939, 28 judges and one prosecutor were made to retire as a consequence of the “Second Jewish Law” (Act No. 4 of 1939) and its implementing regulations, and four court drafters were subject to the provisions of this act.<sup>51</sup> But it was only the beginning...



## 2. 4. The last man standing

The last Minister of Justice of the Horthy era, who was appointed by the Governor of his own will, was Gábor Vladár, who worked in the Government of Géza Lakatos between 29 August and 16 October 1944. The minutes of the Council of Ministers reveal that a draft of a judicial decree was also prepared in order to release some of the assets belonging to *fideicomissum* from the restriction, but it did not actually become law.<sup>52</sup> It is known from other sources that Vladár intervened personally and other ways to release a number of political prisoners, similarly he worked out the decree on banning the extreme right-wing press and authorizing the left-wing press, which was on the agenda of the government meeting held on 14 October, 1944, the last one before the “attempt to jump out of the war”. Interestingly, he did not write about the latter in his memoirs.<sup>53</sup>

At the meeting of the Council of Ministers on 27 September, it was also he who, in agreement with the Minister of Trade and Transport, presented a draft decree for the use of the business, industrial goods and material stocks

as well as other assets of Jews, which was adopted by the members of the Government.<sup>54</sup> At the meeting on 13 September, decisions were made on several judicial personnel matters: on filling the posts of judge and prosecutor.<sup>55</sup> These were probably not implemented *de facto*. During Vladár’s ministership, the Ministry of Justice also struggled with a severe budget deficit: the necessity of applying for a supplementary loan of 347,000 Pengős was raised. The Government agreed to the amount requested.<sup>56</sup>

Although Vladár explicitly stated in the Council of Ministers on 1 September 1944 that in order to achieve the goals of the Government (to jump out of the war) it was essential to “improve the performance of official duties, to maintain order and discipline in public offices to the utmost degree”,<sup>57</sup> confronting the Third Reich finally resulted in total failure – largely because of the efficient intelligence of the German secret service and the betrayal by some officers of the Hungarian general staff.<sup>58</sup> Governor Horthy – to save his and his son’s life – handed over power to the Arrow Cross Party (Hungarian national socialists), which signalled the end of the history of the Ministry of Justice in the bourgeois era, too.<sup>59</sup>

## Notes and references

- <sup>1</sup> The ministerial/ministry decrees, orders and other fragmented documents during and immediately after World War I and II, applying to the judicial organization and not published officially in collections (*Magyarországi Rendeletek Tára [Collection of Hungarian Regulations]* MRT) and gazettes (*Igazságügyi Közlöny [Judicial Gazette]*), can be found in the remaining archives of the former Hungarian Royal Ministry of Justice in the central unit of the Hungarian National Archives, Budapest (Magyar Nemzeti Levéltár Országos Levéltára, MNL OL).
- <sup>2</sup> BÓDINÉ BELIZNAI, Kinga: Balogh Jenő életútja [The Life of Jenő Balogh]. *Jogtörténeti Szemle [Review of Legal History]*, No. 1, 2016. 1–9.; STIPTA, István: Balogh Jenő, az igazságügy református minisztere [Jenő Balogh, a Calvinistic Minister of Justice]. *Jogtörténeti Szemle [Review of Legal History]*, No. 4, 2017. 40–45.; ANTAL, Tamás: Ministers of Justice in Hungary during the Austro–Hungarian Monarchy. *Beiträge zur Rechtsgeschichte Österreichs (BRGÖ)*, No. 2, 2020. 338.
- <sup>3</sup> MNL OL K578, 115/38.
- <sup>4</sup> Regulations of the accelerated criminal procedure: Decrees of the Hungarian Minister of Justice No. 12 002/1914. I. M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 7, 1914. 321–338.), 9550/1915. I.M.E. (MRT 1915. 956–971.), 41 900/1917. I. M. (MRT 1917. 2004–2010.); Decrees of the Hungarian Royal Government No. 5488/1914. M. E. (MRT 1914. 1434–1437.), 6.082/1914. M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 8, 1914. 473–474.), 2060/1915. M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 6, 1915. 309–312.). For information on bourgeois criminal procedure law and war-time jurisdiction see: ANTAL, Tamás: Das Strafverfahrensrecht (1867–1944). In MÁTHÉ, Gábor (ed.): *Die Entwicklung der Verfassung und des Rechts in Ungarn*. Budapest, 2017. Dialóg Campus Kiadó, 565–595.; NÁNÁSI, László: Az I. világháború hatása és következményei a magyar igazságügyi impériumra [The First World War’s Effects and Outcomes in the Hungarian State Jurisdiction]. *Jogtörténeti Szemle [Review of Legal History]*, No. 1, 2011. 28–29.
- <sup>5</sup> MNL OL K578, 115/56., 115/124., 490/17.
- <sup>6</sup> Decree of the Hungarian Royal Government No. 7364/1914. M. E. on the behaviour of state, municipal and communal authorities (of-

fices) in the case of occupation by the enemy (*Igazságügyi Közlöny [Judicial Gazette]*, No. 12, 1914. 629–631.).

<sup>7</sup> MNL OL K578, 490/17.

<sup>8</sup> MNL OL K578, 137.

<sup>9</sup> MNL OL K578, 150., 439.

<sup>10</sup> MNL OL K577, L.b. 1917., 233–249. f.

<sup>11</sup> ANTAL, Tamás: A Historical Institution: Consular Jurisdiction with Special Regard to the Austro–Hungarian Monarchy. In MOTICA, Radu I. – BERCEA, Lucian – PASCA, Viorel (eds.): *Conferința Internațională Bienala / Biennial International Conference Timișoara, Universul Juridic*. Bucharest, 2011. 15–29.; Idem: *A Hundred Years of Public Law in Hungary (1890–1990)*. *Studies on the Modern Hungarian Constitution and Legal History*. Novi Sad, 2012. Agapé, 55–76.

<sup>12</sup> MNL OL K578, 431.

<sup>13</sup> ANTAL 2012. 37–53.; Idem: Organisation of the Court of Appeal in Timișoara (1890–1891). In MOGOȘ, Ioana – STOIAN, Monica (eds.): *Studii și Cercetări Juridice Europene. Conferința Internațională a Doctoranzilor în Drept. Timișoara – aprilie 2010*. Timișoara, 2010. Wolters Kluwer, Vol. II, 44–55.

<sup>14</sup> MNL OL K578, 461/8–15.

<sup>15</sup> MNL OL K578, 461/24–27.

<sup>16</sup> MNL OL K578, 467. (document No. 4329.)

<sup>17</sup> BABUCSNÉ TÓTH, Orsolya: A M. Kir. Honvédelmi Minisztérium Hadsegélyező Hivatala [The National Military Aid Office of the Hung. Royal Ministry of Defense]. In IHÁSZ, István – PINTÉR, János (eds.): *Történeti Muzeológiai Szemle 10. [Review of Historical Museology 10]*. A Magyar Múzeumi Történész Társulat Évkönyve [Yearbook of the Association of Hungarian Museum Historians]. Budapest, 2010. 147–168.

<sup>18</sup> MNL OL K577, E.3. 1917. 108–109. f., 113. f., 117. f.

<sup>19</sup> BÓDINÉ BELIZNAI, Kinga: Töry Gusztáv – kodifikátor és kúriai elnök (1857–1925) [Gusztáv Töry – Codificator and Chief Justice of the Curia (1857–1925)] In Idem (ed.): *A Kúriai és elnökei IV. [Curia and Its Chairmen IV]*. Bibliotheca Curiae. Budapest, 2016. HVG-ORAC Lap- és Könyvkiadó Kft. 11–51.

<sup>20</sup> MNL OL K578, 490/1.

<sup>21</sup> MNL OL K578, 490/43.

- <sup>22</sup> MNL OL K578, 490/40., 490/54.
- <sup>23</sup> MNL OL K578, 490/54.
- <sup>24</sup> HÖRCHER, Ferenc – LORMAN, Thomas (eds.): A History of the Hungarian Constitution: Law, Government and Political Culture in Central Europe. *International Library of Historical Studies* 20. London–New York, 2019. 153–156., 302–303.
- <sup>25</sup> MNL OL K578, 490/54. (6.720/1918. M. E. and other documents)
- <sup>26</sup> HORNYÁK, Árpád: A Délvidék a délszláv állam közigazgatásában, 1918–1941 [The Southern Territories in the Public Administration of the Southern Slavic State, 1918–1941]. *Pro Publico Bono*, No. 1, 2018. 78–83.; HEKA, László: *Szerbia állam- és jogtörténete [Constitution and Legal History of Serbia]*. Szeged, 2005. Bába és Társai Kiadó, 147–153.
- <sup>27</sup> MNL OL K578, 490/54. (a letter dated 24 January 1919, Subotica).
- <sup>28</sup> STIPTA, István: Die ungarische Rechtsgeschichtswissenschaft zur Zeit des Dualismus. In MÁTHÉ (ed.) 2017. 614.; KISS, Barnabás: Ödön Polner (1865–1961). *FORVM. Acta Juridica et Politica Szeged*, No. 2, 2021. 203–222.
- <sup>29</sup> MNL OL K578, 490/81.
- <sup>30</sup> POLNER, Ödön: *Emlékeim (nagyapától) [Memories (from grandfather)]*. HAVASS, Miklós (ed.). Budapest, 2008. Corner, 374–378.
- <sup>31</sup> [https://m.blog.hu/cs/csbaihazak/image/kastely/polner/polner\\_dekan.jpg](https://m.blog.hu/cs/csbaihazak/image/kastely/polner/polner_dekan.jpg).
- <sup>32</sup> Decrees of the Hungarian Royal Government No. 7780/1938 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 10, 1938. 305.), 9600/1938 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 12, 1938. 340–345.), 5800/1939 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 6, 1939. 135–138.), 7810/1940 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 11, 1940. 249–253.)
- <sup>33</sup> RADY, Martyn: Nonnisi in sensu legum? Decree and Rendelet in Hungary (1790–1914). *Hungarian Historical Review*, No. 1, 2016. 15–17.  
[http://epa.oszk.hu/02400/02460/00015/pdf/EPA02460\\_hungarian\\_historical\\_review\\_2016\\_1\\_005-021.pdf](http://epa.oszk.hu/02400/02460/00015/pdf/EPA02460_hungarian_historical_review_2016_1_005-021.pdf).
- <sup>34</sup> Decree of the Hungarian Royal Government No. 5470/1941 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 7, 1941. 267–270.)
- <sup>35</sup> Act No. 34 of 1938, Act No. 6 of 1939, Act No. 26 of 1940.
- <sup>36</sup> For example: Decree of the Hungarian Royal Government No. 2810/1942 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 5, 1942. 193–209.). See also ŠARKIĆ, Srđan: Az alkalmazásban maradt magyar jogszabályok a Szerb–Horvát–Szlóven Királyságban (Jugoszláviában) [Hungarian Law in Force in the Serbian–Croatian–Slovenian Monarchy (Yugoslavia)]. In VÁRADY, Tibor (ed.): *Délvidéki (vajdasági) magyar jogászok. A Monarchiától a titói korszak végéig [Hungarian Lawyers in the Southern Territories (Vojvodina). From the Monarchy until the End of Tito Era]*. Újvidék, 2020. Vajdasági Magyar Jogászegylet, 171–205.; ŠARKIĆ, Srđan: A magyar jog alkalmazása Bánátban a német megszállás alatt (1941–1944) [Practice of the Hungarian Law in Banat during the German Occupation (1941–1944)]. In *Ibid.* 263–276.
- <sup>37</sup> BIERNACKI, Karol Franciszek: Tamás Antal: The History of the Royal Appeal Court of Szeged between 1890 and 1950. *Journal on European History of Law*, No. 2, 2020. 192–193.
- <sup>38</sup> Decrees of the Hungarian Royal Government No. 5470/1941 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 7, 1941. 267–270. 1–5. §§), 5620/1941 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 7, 1941. 270.), 6150/1941 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 8, 1941. 319.), 8000/1941 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 11, 1941. 403.), 610/1942 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 1, 1942. 1.). The district courts of Darda [Dárda], Murska Sobota [Muraszombat], Donja Lendava [Alsólendva], Čakovec [Csáktornya] and Prelog [Perlak] were added to the areas of the tribunals of Pécs, Szombathely, Zalaegerszeg and Nagykanizsa.
- <sup>39</sup> UEDA, Rieko (et al.): Plósz, Alexander: Die Prozeßleitung des Gerichts nach der neuen ungarischen Zivilprozeßordnung 1912. *Kumamoto Law Review*, No. 137, 2016. 23–35.; Idem: *A brief description of Sándor Plósz: The drafter of the Hungarian civil procedural law under the Austro–Hungarian Dual Monarchy*. Memoirs of the Faculty of Education, Kumamoto University, December 2017. 25–31.
- <sup>40</sup> Decrees of the Hungarian Royal Government No. 5480/1941 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 7, 1941. 272–282. 1–6. §§), 730/1942 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 2, 1942. 51.), 1990/1942 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 3, 1942. 65–73.).
- <sup>41</sup> Decree of the Hungarian Royal Government No. 5490/1941 M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 7, 1941. 293–295. 1–15. §§).
- <sup>42</sup> Decrees of the Hungarian Royal Minister of Justice No. 42 100/1914 I. M., 42 200/1914 I. M. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 7, 1914. Appendixes 1–2), 42 400/1914 I. M. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 9, 1914. Appendix).
- <sup>43</sup> MNL OL K577, L.8. 1940. File No. 44 068.
- <sup>44</sup> <https://adt.arcanum.com/hu/collection/OrszagepitesNemzetpolitikaiSzolgalat/>.
- <sup>45</sup> MNL OL K577, L.8. 1940. File No. B.43/1941.
- <sup>46</sup> MNL OL K577, L.8. 1940. A file dated 5 December 1940.
- <sup>47</sup> MNL OL K577, L.8. 1940. A file with no number.
- <sup>48</sup> Decree of the Hungarian Royal Government No. 1 500/1941 M. E. (MRT 1941, 166–173.)
- <sup>49</sup> VÉRTES, Róbert: Magyarországi zsidótörvények és rendeletek, 1938–1945 [Jewish Acts and Decrees in Hungary, 1938–1945]. Budapest, 1997. Polgár Kiadó Kft., 19–155.; SCHWEITZER, Gábor: Responses in Hungarian Constitutional Theory to the so-called Anti-Jewish Laws (1938–1943). *Journal on European History of Law*, No. 2, 2014. 67–72. (The Jewish Acts were especially: No. 15 of 1938, No. 4 of 1939, No. 15 of 1941, No. 8 of 1942.)
- <sup>50</sup> MNL OL K577, L.8. 1940. A file with no number.
- <sup>51</sup> *Magyarország igazságügye az 1939. évben [Judicature of Hungary in the Year of 1939. Separatum from the official governmental report of 1939]*. Budapest, 1942. I–II. 8.
- <sup>52</sup> MNL OL Official minutes of the Council of Ministers [CM], 6 Sept 1944 (No. 6.).
- <sup>53</sup> RÉVÉSZ, Béla (ed.): *Vladár Gábor emlékkötet (1881–1972) [Memorial Book in Honour of Gábor Vladár (1881–1972)]*. Budapest, 2015. Igazságügyi Minisztérium–Magyar Közlöny Lap- és Könyvkiadó Kft., 121–126.; VLADÁR, Gábor: *Visszaemlékezéseim [Memoires]*. Budapest, 1997. Püski Kiadó Kft., 234–235.
- <sup>54</sup> VÉRTES 1997. 355.; Decree of the Hungarian Royal Government 3520/1944. M. E. (*Igazságügyi Közlöny [Judicial Gazette]*, No. 9, 1944. 326.).
- <sup>55</sup> CM 13 Sept 1944 (No. 5).
- <sup>56</sup> CM 6 Sept 1944 (No. 7); 27 Sept 1944 (No. 34).
- <sup>57</sup> CM 1 Sept 1944 (No. 26).
- <sup>58</sup> VLADÁR 1997. 235–245.
- <sup>59</sup> HÖRCHER–LORMAN 2019. 184–187.; MACARTNEY, C. A.: *October Fifteenth: A History of Modern Hungary, 1927–1945*. Edinburgh, 1956. University Press, 444–470.



Competency Court (a forum which functioned in Hungary between 1907 and 1949) is a public court of law. Functionally it arranges the responsibilities among the government bodies to avoid the arbitrary practice of authorities. As such, it is closely related to administrative jurisdiction and administrative courts. Adjudication on jurisdiction is consequently a form of public law jurisdiction, the constitutional guarantee for the separation of powers, so it can be presented in Hungary only after the realisation of the system of separated powers.

## 1. Legal historical background

Before 1848 the branches of power had not been separated, thus it was both unnecessary and impossible to legally protect their separation, namely, to prevent either authority from growing above the others. Before 1848 there might have occurred some “jurisdictional confrontation” merely between the local and the central governments. In any such case, the decision mainly considered the objective to protect the autonomy of local governments, so the arrangement of the competencies fell within the cognizance of the county general meetings (*congregatio generalis*). The king acted only in case no jurisdictional confrontation occurred between the regional court and the local governments (counties or free royal towns).<sup>1</sup> We cannot call it jurisdiction on competency in the modern sense, as the judge of the legal dispute could be qualified as a judicial body considering neither the institution, nor the procedure. Two aspects, however, classifies it as the predecessor of competency jurisdiction: the concept of competencies appeared as early as in 1715 (Act No. 28 of 1715) and the protection of the concept “every dispute requires a judge” (Act No. 17 of 1715).<sup>2</sup> Section 3 of the latter regulation ordered that

*“In every other case, however, namely considering the differences of the cases occurred and not requiring lawful jurisdiction, it will remain under the competency of the royal power to delegate judges suitable for the quality and merit of such cases.”*

Modern Hungarian judicial organisation system was founded in 1869. Soon after the Austro–Hungarian compromise, as part of the judicial reform, the Ministry of Justice headed by Boldizsár Horvát introduced the Act which finalised the conditions of the qualification of judges and the basic regulations of practicing the profession (Act No. 4 of 1869). As a result, the separation of powers was completed with the independent judiciary power.

As opposed to the precious feudalistic age, the courts of the dualistic period were governmental bodies, which the legislator framed with guarantees. The courts were immovable and unified organisations, their hierarchy, competency, jurisdiction and supervision were regulated by the law.<sup>3</sup>

Regulations expressed the separation of administration and jurisdiction. Competency jurisdiction also appeared

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in the same law, as the division, which can be found in Act No. 4 of 1869, was incomplete. (That was the source of its nickname “the court of conciliation” used in public speech and journalism.) In practice, several cases belonging to jurisdictional scope remained in the competency of administration, such as, for instance, cases of servants, infringement jurisdiction, patrons’ cases. Consequently, it was necessary that § 25 of the above-mentioned law would regulate judgements on jurisdictional debates. The law provisionally authorised the government, or “ministry”, to decide in competency confrontations, “until further legislative action”.

As a Hungarian particularity, legal institutions that were meant to function temporarily became constant,<sup>4</sup> as it happened in the case of the competency of the government: this “provisional” practice remained in action for nearly 40 years.<sup>5</sup>

But, as this task hugely overburdened the council of ministers on the one hand, while on the other hand the resolving was inconsistent with the constitutional requirements, the issue of dissolving this competency repeatedly occurred.<sup>6</sup> Assigning the ministries with such a competency offends the concept of the separation of powers. (It was further offended by not making public the competency decisions of the council of ministers, claiming that government decisions were secret.<sup>7</sup>) Also, it results in an excessive governmental power while the government, as a state authority, was not limited by the guarantees of independence, which overturns the balance of powers. Furthermore, there was no regulation at all on substantial law, so the council of ministers was entitled to act at their discretion, even arbitrarily.<sup>8</sup>

However, legislation could have had the opportunity to terminate this power of the government. The issue emerged twice, in 1879 and in 1883, when first in connection with the forestry law, then with the founding of financial administrative courts, but it remained unchanged. Yet, in 1896, when the Act on Administrative Court was passed, section 131 contained a special court for competency confrontations, although the provision in section 159 still preserved the competency judgement for the government. Gyula Wlassics,<sup>9</sup> professor of law and minister of justice, published a draft on the arrangement of competency courts as early as in 1880, when he himself considered it the right solution. Later, however, he changed his opinion, and preferred competency located at jurisdiction.<sup>10</sup>

According to contemporary views, the government acted in a surprisingly objective and responsible way,

*“it never abused its unlimited power, even though there were no procedural guarantees. [...] During discussions, the ministers respected the legal sources with the most rigorous objectivity, and since the minister of justice presented the cases in the council of ministers, the main concern of all the ministers of justice was to observe the law in the most legitimate way.”<sup>11</sup>*

As a result, this competency of the government was questioned only theoretically, and legislation kept preserving it. Among the arguments for the preservation there were historical (a), practical (b), and political (c) arguments. Ad (a): the protection of competencies had been the privilege of the executive power (of the king, later of the government); ad (b): what functioned well, had to be left alone; ad (c): the political objective was above all to separate administration and jurisdiction; besides it was marginal that competency jurisdiction should have been organised. Several professionals protested for the competency decisions to be handed over to judges,<sup>12</sup> but the legislation failed to amend the prevailing system three times.<sup>13</sup>

In order to settle the situation, the politicians' first proposal was to introduce a body similar to the state council, as the idea occurred in the first drafts of baron Gyula Wlassics around 1880. In his later draft (1895), he further developed his proposal, and definitely encouraged the location of legibility disputes to the judiciary body.

Wlassics – that time professor and member of parliament – unified the professional and political requirements, which effort was appreciated by professionals: he supposed that his bill would be discussed right after the bill on administrative jurisdiction.<sup>14</sup> In spite of its brevity (the bill consisted of only 27 sections), it wished to regulate three crucial domains, by which the later functioning of the competency court has to be evaluated: the domains of the legal scope, the organisation, and the procedure.

With regards to the organisation, he remarked that the solution most European countries chose by assuring the competency of decision for the head of state (king), would not find followers, similarly to the one which refers the decision of competency disputes to the regular courts or a state council that would be settled later. As early as in 1895, he considered as the optimal solution a miscella-

neous body consisting of members of the Curia and the Administrative Court, based on the concept of parity. In terms of procedure, he recommended the ex officio procedure, having moved off from the earlier notion of procedure on motion, the so-called competency complaint. Even more so, because this practice was formulated in the practice of the government between 1869 and 1908.

The bill by Wlassics classified two sets of cases under the power of competency jurisdiction: those (positive or negative) competency disputes in which administrative authorities oppose regular or administrative courts<sup>16</sup> on the one hand, while on the other hand, disputes which occur between administrative courts and regular courts.

## 2. Organising the Competency Court

It was, however, Act No. 61 of 1907 which finally resolved the issue by diverting from the actual practice and organising the Competency Court. In terms of its original competency, this court was entitled to decide in jurisdictional debates between regular courts and

the Administrative Court, and also between one of these and the administrative authorities. The act was formed according to the amendment of the bill by Gyula Wlassics, and it was announced in the *Budapest Journal (Budapesti Közlöny)* on 31 December 1907. The court started its practice on 1 May 1908 within the meaning of the provision of execution (1201/1908. M. E.). Its first chairman was Adolf Oberschall,<sup>17</sup> who had a crucial part in the thoroughly detailed formulation of the court's order of business. The first hearing was held on 5 October in the same year, chaired by Antal Günther.

With the introduction of the Competency Court, the previous practice changed radically. The act decreed the establishment of a special jurisdiction to solve competency confrontations. According to the concept, competency jurisdiction is not

an action in the general sense of jurisdiction, namely that it does not set legal disputes in order to settle the offended set of rights, but a decision of objective nature: according to this understanding, competency jurisdiction is meant to explain the law concerning competency, the overall protection of the competency rules of the state,<sup>18</sup> and not a dispute about subjective rights. As a result of this objective character, there is no limitation in its jurisdiction.



Gyula Wlassics (1852–1937)<sup>15</sup>

*“The essence of the question is which authority is entitled by the legal sources to proceed in either one or the other field of law, and if there might be a confrontation between the authorities about the competency, it is indifferent in which legal branch the confrontation happened.”<sup>19</sup>*

The jurisdictional form guaranteed the full impartiality, independence, and the relevant professional eligibility of the judging forum, even if, in the early 20<sup>th</sup> century, the professionals of law required the involvement of the professionals of administration in jurisdiction.<sup>20</sup> The nearly 40 years’ practice of the Competency Court proves that the heads of the courts kept the guarantees of professionalism in mind without a cogent regulation. It became a permanent practice of the courts by means of customary law that the council involved judges from the branch of the disputed case. The special knowledge was represented by the members of the National Agrarian Court and the Military Supreme Court who were elected members of the Competency Court.<sup>21</sup>

### 3. Settling jurisdictional disputes

Regarding the organisation of the Competency Court, it was first formed as a miscellaneous court, assembled of the chairmen and members of the Curia and the Administrative Court selected on the concept of parity. It was chaired alternately in three-year courses by the chairmen of the Curia and the Administrative Court, eight members were the judges of the Curia, the other eight were the judges of the Administrative Court.<sup>22</sup> The judges were balloted for a period of three years at a full section by both the Curia and the Administrative Court. Both the civil and the criminal sections of the Curia, and the general administrative and financial sections of the Administrative Court were represented in the Competency Court.

Two basic concepts prevailed in this assembly: impartiality and professionalism. The guarantee for impartiality were the facts that the Competency Court was a judiciary body fortified with the guarantee of judicial independence, its authorised judges were protected with several regulations on conflicts-of-interest, who were elected for the position. Besides, the guarantee of professionalism was assured by the miscellaneous court, the presence of members of special courts in the procedure, and the fact that in factual cases the certain judicial councils acted in the composition that suited the case most. The form of the court assured the complete impartiality and independence of the judging forum, and also the necessary professionalism even in the period when theoretical professionals often clamoured for the involvement of administrative lawyers. The nearly forty-year practice of the Competency Court proves that the chairmen observed the guarantees of professionalism even without a cogent regulation, as it became a constant routine that in the council there were judges with expertise in the discipline of the case. Special expertise was represented by the judges of the

National Agrarian Court and the Military Supreme Court as elected judges of the Competency Court.<sup>23</sup> In the particular cases the Competency Court decreed as a seven-member council, making an unappealable, obligatory decree. The reason for the seven members originated in the number of the judicial councils of the Curia.<sup>24</sup> The procedure was decided on at a complete session, which was approved by the ministry in its decree No. 1935/1908. M. E. The procedure was later amended in the decree No. 2299/1915. M. E., then in the decree No. 2700/1931. M. E. The court acted under the direct supervision of the prime minister.

Ironically, throughout the history of the Competency Court, the most cardinal issue was the one of its competencies. The law listed the following cases in detail (Act No. 61 of 1907, § 7):

1. if both the general court and the administrative court or the administrative authority, or, in other cases, if both the administrative court and the administrative authority, either of whose competency the procedure involves, have decided that the procedure does not belong under their competency, decision in their final judgement that the procedure does not fall within their competency (negative competency confrontation);
2. if the general court and the administrative court or the administrative authority decided in their final judgement about the same case that the procedure falls within their competency (positive competency confrontation);
3. if the general court – either appealable or non-appealable – and the administrative court decided in the same case;
4. if the general court in a non-appealable judgment, and the administrative court – either in an appealable or non-appealable judgement – has decided in the merit of the same case;
5. if either of the above-mentioned judiciary or administrative authority has stated its competence according to point 2, while the other authority has decided in the merit of the same case according to point 3 or 4.

Owing to this taxonomy, in practice the court refused the motions about competency confrontations and disputes which cannot be classified in it. Thus, for instance, the court decided on the lack of competency confrontation in the case of a presumed competency confrontation between a specific judgment and the regulation about the general rule.

Such a taxonomic list of legibility meant the obstacle of judgement, which inspired the extension of competencies in 1928. Even the more so, because the chief task of the competency court was the general, objective protection of the jurisdictional regulations of the state, to guard over the regulation of § 1 of Act No. 4 of 1968, namely that both the judiciary and the administrative system of authorities may act within the limits of their own competence, as regulated. In this sense, even though the specific cases were judged with conceptual consistence, the court always carefully observed the specific legal issue, and consequently

it was the duty of the competency judiciary to judge the competency confrontations between the special courts or between the special courts and the general courts. This latter task, however, could not be fulfilled with the extensive interpretation of the competency rules of the competency court,<sup>25</sup> which called for the 1928 amendment. The regulations were formed as the following:

a) According to the regulations, the procedure of the Competency Court could take place when the specific rule enabled it specifically. Such cases were the regulations that created the certain special courts, such as, for instance, economic courts as ordered in provision 8759/1920. M. E., which regulated the organisation of the special courts, or Act No. 30 of 1921 on judging on worker's insurance, which explicitly based the power of jurisdictional disputes between these special courts and the general courts, administrative courts, or administrative authorities on the competency courts.

But, as we have already mentioned, Act No. 4 of 1869 did not completely divide administration and justice, in the next few decades (in fact up to this date), judiciary administration and – even though it causes less problems in terms of jurisdictional disputes – court acting as an administrative authority. In this aspect, the Competency Court declared that administrative bodies are not to be identified according to their name (e.g., village judge), neither of the scope (e.g., the police trial judge's function in the case of a sheriff), but according to the legal nature of the body, or, as the regulation put it, their subjective feature. The specific result of the rule was that there was no obstacle for the decision in a jurisdictional dispute between a village leader (judge) and the court.<sup>26</sup>

b) If there was no such specific legal regulation, this hiatus could result in disputes. Before 1928, apart from the two examples mentioned before, in most cases no rule regulated the case when a jurisdictional dispute emerged between certain special courts, so these disputes could not be settled legally. In 1907, legislators entrusted it on the future practice of the Competency Court, actually on custom, as the argumentation of the law stated that it was impossible to itemise the special courts. Thus, the legislator tacitly implied that the concept of the general court should be interpreted extensively, in general as “court”, also including the special courts. However, the Competency Court finalised as early as in 1913 in its executive decision, that the concept of general court could not be interpreted in such an extensive way, and consequently, it was unable to decide in jurisdictional disputes concerning special courts.<sup>27</sup>

Even though it refused to handle special courts as general courts, the Competency Court pushed the interpretation of the concepts of general court to the limit. It stated the procedural competence of the special councils of the Curia (such as the minor disciplinary council or the attorneys' council) by applying the formal interpretation of the general court, neglecting the content, based on the concept of *argumentum a maiore ad minus*.<sup>28</sup>

The classification of legal status of the royal prosecution created a similarly debated case, as jurisdictional

disputes between the prosecution and the administrative authorities were often judged by the Competency Court. This reflects the characteristic interpretation of the law, as the court treated the royal prosecution as a kind of administrative authority, given that it was an independent public authority according to Act No. 33 of 1871, which was under the direct supervision since 1891. By referring to this law, the court refused to judge in cases between the prosecution and administrative bodies.

The assessment of the judiciary bodies acting in cases related to housing was very exciting. According to the judgment of the Competency Court, the council of house-renting or the single judge in housing cases was a body fitted into the normal judicial organisation, because its chairperson was appointed either from the local court, or from among the judges of the local court by the chairman of the court (the 1921 and 1923 decrees). On the other hand, even though its members were court judges, the appeal council on housing cases was an administrative body because it acted upon the commission of the administrative body who appointed them (namely the minister of welfare and labour; decree in 1926).

Similarly, the Competency Court categorised the elected court of workers' insurance – which acted as the predecessor of the court of workers' insurance – as an administrative body to dissolve the jurisdictional conflict emerged between this court and the general court. (In this 1909 decree the court ascertained its view that in the terminology of the regulation the term administrative court covers Royal Administrative Court.)<sup>29</sup> Later legal custom, however, altered it: with regard to the Patent Court in 1923, even though its units were named as Patent Authority and Patent Council in the 1895 law, and later the 1920 law,<sup>30</sup> the latter containing the organisational amendments and the notification and judiciary departments, the Competency Court declared a character of special court, and thus, being unauthorised to do so, it did not decide the dispute.<sup>31</sup>

c) Complaints of competence was an entitlement which could not be limited in time, assured by the legislator and contemporary custom by detecting and judging competency disputed *ex officio*. In case, however, we take the temporal absoluteness a ground rule, it may conflict the concept of *res iudicata*, as the substantial power means that the merited decision cannot be appealed by legal remedy. When, previous the foundation of the Competency Court, it was the duty of the Government to solve competency conflicts, it either the Government, or the acting Ministry of Justice) often did so in its legibility decision by repealing a final judgement later, referring to lack of competence. Before 1907, the need for an unlimited jurisdictional adjudication was stronger than substantive power. But the practice of the Competency Court ceased to carry on this process by preferring *res iudicata*. Both the acts of 1907 and 1928 regulated *expressis verbis* that in case the general court or the Administrative Court (also extending the rule to the special court in 1928) has decided in a case in merit, there should be no appeal after its coming into force with reference to belonging to the competence of administration. After the final judgement

of the court, no administrative body could bring a case into its competency and could not act in it. It is interesting, though, that in spite of the explicit regulation, the Competency Court had to make decisions of such content every other year.<sup>32</sup> This regulation, however, did not settle the case when, after the final judgment of the regular courts, a competency dispute emerged in which the administrative court should have state its competency. So, if the Administrative Court had stated about a case that it had belonged to its competence after the final judgement of a general court, the dispute could have been referred to the Competency Court.

This rule, however, concerned only the final judgements of merit, and there were no limitations in the cases of negative competency judgements. So, if any court decided on the lack of competence in its final judgement, the case was to be decided on at the administrative bodies.

The law also regulated that after the final judgements of the general court and the administrative court, no further procedure is justified on the basis that the case belonged within the competence of the administrative authority, and in such cases the final judgement of the court is authoritative as opposed to the administrative authority. The law made the protection of the *res iudicata* a basic concept, the opposite of which would have been the concept of the unlimited competency complaint. (The latter appeared in the custom of the Government.<sup>33</sup>)

Since the Act No. 4 of 1869 was not consistent in separating administration and judging, a series of legal disputes could emerge in which the court had to decide between the competence of an administrative body and the court. In such cases the complaint was issued *ex officio*, obligingly.

The picture was further shaded by the fact that several regulations granted competencies to special organisations and special courts. This made it clear very soon, in the first years of the court that there is another segment of jurisdictional disputes in which there is no common superior body above the organisations disputing about procedure law: these were the legibility disputes between the numerous special courts founded by the regulations, and the general courts.

Consequently, Act 43 of 1928 and its implementing decree No.1120/1929. M. E. extended the power of the Competency Court to the decision of such competency conflicts that emerged between either the general court or the special court on the one hand, or between the administrative authorities on the other hand, and also to those cases which emerged between general and special courts, and finally the ones between two special courts. The law also regulated that the implementing decrees by the Competency Court would also be obligatory for the courts and the administrative bodies.<sup>34</sup>

To illustrate the previously mentioned cases, let us examine some specific examples of the vast case law collection of the Competency Court. According the general wording of the law, a conflict of competency is involved if 1) the bodies defined by the law 2) in the same case 3) have made conflicting decisions concerning competency. Consequently, the basic intention of the legislator was that

the conflicts between the court had to be settled in all circumstances. In cases of legal bodies without a common superior, the dispute is settled at the Competency Court, based on its general competence. But in cases when the competency dispute is to be settled by the directives and power of a specific rule, or the decision about the acting body was made possibly outside the Competency Court – by the compromise of the authorities (bodies) in the conflict, for instance. (Such a case was the one of the obligations to harmonise between the supreme judicial bodies prescribed by the 1912 military criminal procedure law in the competency dispute between the military penal authority and the civil penal authority as, which was taken over by the competency authority of the Competency Court from 1928, by which the issue of competency was actually placed in the hands of the forum entitled to act with judicial independence.)

One crucial element of the competency entitlement of the Competency Court was that besides the sameness of the parties, the case had to be the same also in terms of substance, namely that the legal case that emerged between the parties had to be substantialised in the same aspect. In that sense the sameness of the case was not realised even in the cases involving the same parties if, in the administrative procedure, the subject of the case was an offence (the removal of a boundary marker), while in the court procedure, the case was of private property as a claim of private law.<sup>35</sup> The decision was similar when, in a case of opening a window, the court proceeded in a case of neighbours' rights, while the administrative body proceeded in terms of building regulations, both in their own competence.<sup>36</sup> The simple numerical difference of the claims did not exclude the sameness of case, and consequently the procedure of the Competency Court.<sup>37</sup>

For the statement of the competence of the Competency Court it was also necessary to state its competence (or the lack of competence) by at least two bodies, directly or indirectly in a resolution (by justifiably referring the case back to administration), while the competence of either bodies involves the procedure. At the same time, it was not a necessary requirement that the judgement of the case should be referred to another body with competence. A claim originated in service may be the subject of a court procedure as a private law claim, it may be a claim of as servant's wages, which belongs within the servants' authority, but it may also be the claim of a craftsman's apprentice. In this issue, in case of a conflict, the Competency Court's decision was based on the subject of the case, actually the feature and the substantial elements of the claim. But the Competency Court did not state a competency conflict in the case either, when it proceeded and decided in different aspects of the same case, but in its own legal competence.

The legislator regulated the procedure of the Competency Court, also the process of the hearings by applying the rules of the procedure of the administrative court. The precondition was to divide administration and justice, as an essential requirement of every constitutional state. If the state does not fulfil this requirement properly (as it happened in

Hungary), the numerous conflicts will undermine legal certainty, resulting in unpredictable law enforcement.

The necessity of judgments on jurisdiction – without guarantees – may emerge as a result of abuses by the authorities or courts.

Entrusting this guarantee of the division of power by deploying competencies to a miscellaneous court of high prestige assures independence and impartiality, which is essential for a procedure of objective kind that in specific processes interprets the law independently from substantive law or demands. Even though there was a theoretical and practical demand to involve professionals from administration, the activity of the court proved that in fact it is not necessary for the decision about competence.

For an established decision the judges do not need to know the taxonomy or the substantial character of the case, but the elements of its content, for which the most suitable forum is the judiciary.

For positive or negative competency disputes the law orders the same procedure to apply.

Furthermore, the legislator purported the complete equality of the involved administrative and/or judicial bodies. At the same time, it reduced the role of the private parties – concerning the objective character of judging – to the minimum, leaving room for the *ex officio* procedure.

The ground for the procedure was not the right to complain (even though the draft by Wlassics preferred it), but the requirement to submit, which was also more economical and more efficient from the aspect of the procedure. The body which made the decision that caused the competency conflict was obliged to submit the case within 15 days.

The already emerged competency disputes had to be arranged, and furthermore, as soon as possible (this way the procedure rules did not allow the postponement or delay of the hearing), because the legal uncertainty caused by the dispute can only be terminated this way. So, it was not a reason to terminate the procedure in competency cases, for instance, if the party deceased.

The most important moral of the competency disputes is still the fact that it is primarily the legislator who has

to avoid jurisdictional confrontations by the most consequent arrangement of competencies. In case the regulations creating competencies are still incomplete – in the case of substantial law there must be a forum which can state the authorised body in each case on an objective ground, independently from the claim to be asserted, and at the same to capable of excluding, forbidding any other body from acting in the case. This is one of the most important guarantees of the constitutional operation of justice.

## 4. Epilogue

The Act No. 2 of 1949 declared the termination of the Competency Court, and at the same time it ordered to establish the Competency Arbitration Committee. The law came into force on 1 September 1949 by the implementing government decree No. 4080/1949. In the cases which had been within the competence of the Competency Court before, the Competency Arbitration Committee was to act, chaired by the minister of justice. One member of the committee was appointed by the interior minister, the other member was a judge from the council chairs and members of the Curia appointed by the chairperson of the Curia. The members acted for three years. The Competency Arbitration Committee held its inaugural session on 21 October 1949 in the building of the Ministry of Justice. The decree No. 207/1952 (8 Dec) declared, and then the decree No. 102/1952 (8 Oct) repeated that in the specific competency disputes between the certain committees, the chairperson of the Central Arbitration Committee was to decide, while in the competency disputes between the committee and the civil court the Competency Arbitration Committee was to decide.

The decree No. 1/1954 (26 March) by the Ministry of Justice finally declared the termination of the Competency Arbitration Committee based on Act No. 2 of 1954. By this act a crucial element of Hungarian public law jurisdiction was lost after nearly fifty years of operation.

## Notes and references

<sup>1</sup> WINKLER, János: *A magyar igazságszolgáltatási szervezet és polgári peres eljárás a mohácsi vésztől 1848-ig* [The Organisation of the Hungarian Judiciary and Civil Litigation from the Mohacs Disaster (1526) to 1848]. Vol. II. Pécs, 1927. Dunántúl Könyvkiadó, 309.

<sup>2</sup> FEKETEKUTI MANKOVICS, László: *A hatásköri bíráskodás* [Adjudication on Competency]. Budapest, 1940. Attila nyomda, 137.

<sup>3</sup> With regard to the independent judicial power, the monograph of Gábor MÁTHÉ: *A magyar burzsoá igazságszolgáltatási szervezet 1867–1875* [Formation of the Hungarian Bourgeois Judicial Organization 1867–1875] (Budapest, 1982. Akadémiai Kiadó) and István STIPTA: *A magyar bírósági rendszer története* [History of the Hungarian Court System] (Debrecen, 1998. Multiplex Media) are fundamental, and – as a result of the ever increasing research in the history of the courts – several studies have recently been published which discuss the process from different aspects.

<sup>4</sup> Wlassics, Gyula: *A tízéves hatásköri bíróság* [Ten Years Old Competency Court]. *Jogállam* [Rule of Law], No. 5–6, 1918. 7.

<sup>5</sup> Gyula Wlassics referred to this in his inaugural speech at the Administrative Court. See: *Az új korszak* [The New Era]. *Budapesti Hírlap* [Budapest News], No. 121 of 3. 5. 1906. 7–8.; BÓDINÉ BELIZNAI, Kinga: *Wlassics Gyula a közigazgatási bíróság élén (1906–1933)* [Julius Wlassics, President of the Administrative Court (1906–1933)]. *Miskolci Jogi Szemle* [Law Review of Miskolc], No. 2, 2017. 108.

<sup>6</sup> Wlassics 1918. 8–10.; MAGYARY, Géza: *Báró Wlassics Gyula egy új tanulmánya* [A New Study by Baron Julius Wlassics]. *Budapesti Szemle* [Budapest Review], No. 501, 1918. 459.; KONCZ, Ibolya Katalin: *A Hatásköri Bíróság Magyarországon* [The Competency Court in Hungary]. *Jogtörténelmi Szemle* [Review of Legal History], No. 1–2, 2017. 98.

<sup>7</sup> Wlassics 1918. p. 11.

<sup>8</sup> FEKETEKUTI MANKOVICS 1940. 138.; Wlassics 1918. 8–10.; TÉRFI, Gyula: *A hatásköri bíróságról szóló törvényjavaslat* [The Bill on the Court of Jurisdiction]. *Jogtudományi Közlemény* [Jurisprudential Bulletin], No. 44, 1907. 368.



- <sup>9</sup> BÓDINÉ BELIZNAI 2017. 105–123.
- <sup>10</sup> SCHWEITZER, Gábor: The presidents of the Hungarian Royal Administrative Court (1897–1949). *Przegląd Prawa Konstytucyjnego*, No. 6, 2015. 53–63. <https://doi.org/10.15804/ppk.2015.06.03>; STIPTA, István: A magyar pénzügyi közigazgatási bíróság jellege és hatásköre. Az 1883. évi LXIII. tc. tartalma és jelentősége [Nature and Competency of the Hungarian Financial Administrative Court. The Content and Significance of Act LXIII of 1883]. *Publicationes Universitatis Miskolciensis Sectio Juridica et Politica*. Miskolc, 2011. 89–106.; BÓDINÉ BELIZNAI 2017. 115.
- <sup>11</sup> WLASSICS 1918. 10–11.
- <sup>12</sup> Besides (and following) Wlassics (e.g., 1880), Gusztáv Beksics, for example.
- <sup>13</sup> Also in 1879, 1883 and 1896, as indicated earlier in this paper.
- <sup>14</sup> KMETY, Károly: A hatásköri összeütközések bírósága [Court of Jurisdictional Confrontations]. *Jogtudományi Közlöny [Jurisprudential Bulletin]*, No. 15, 1895. 25–26.
- <sup>15</sup> <https://birosag.hu/sites/default/files/users/wlassics.jpg>.
- <sup>16</sup> The reason for the plural is that there were originally plans to organise lower administrative courts. In the 1895 draft of Wlassics, the Competency Court was composed of judges of the Royal Curia and the 'Higher' Administrative Court.
- <sup>17</sup> Life and career sketch BÓDINÉ BELIZNAI, Kinga: „Modern fej és hihetetlenül nagy, korszerű tudás”: Oberschall Adolf életútja (1839–1908) [“A modern head and an incredibly great, modern knowledge”: the career of Adolf Oberschall (1839–1908)]. In BÓDINÉ BELIZNAI, Kinga (ed.): *A Kúria és elnökei [The Curia and its Presidents]*. Vol. III. Bibliotheca Curiae. Budapest, 2015. HVG-ORAC Lap- és Könyvkiadó Kft. 11–45.
- <sup>18</sup> FEKETEKUTI MANKOVICS 1940. 152.
- <sup>19</sup> Ministerial explanatory memorandum to Act No. 61 of 1907.
- <sup>20</sup> ILLYEFALVI VITÉZ Géza: *Hatásköri bíráskodás és a magyar hatásköri bíróság szervezete [Adjudication on Jurisdiction and the Organisation of the Hungarian Competency Court]*. Budapest, 1909. Athenaeum, 27–29. This has been bridged by the actual organisation, and science has found that “a large proportion of administrative judges start their careers in the administration”. FEKETEKUTI MANKOVICS 1940. 146.
- <sup>21</sup> *Ibid.* 152.
- <sup>22</sup> Act No. 61 of 1907, §§ 2–3; MÁRKUS, Desider: Ungarisches Verwaltungsrecht. In HUBER, Max – JELLINEK, Georg – LABAND, Paul – PILOTY, Robert (Hg.): *Das öffentliche Recht der Gegenwart*. Tübingen, 1912. J. C. B. Mohr, 57.
- <sup>23</sup> FEKETEKUTI MANKOVICS 1940. 152.
- <sup>24</sup> Ministerial explanatory memorandum to § 4 of Act No. 61 of 1907
- <sup>25</sup> This has been stated by the court with jurisdiction in several decisions in which the complaint was dismissed for lack of jurisdiction, for example in its judgments No. 1922. Hb 62. concerning conflicts between the Patent Court and other judicial or administrative bodies. FEKETEKUTI MANKOVICS 1940. 152.
- <sup>26</sup> 16 November 1908, Judgment No. Hb. 42; 15 December 1911, Judgment No. Hb. 105. See also FEKETEKUTI MANKOVICS 1940. 162.
- <sup>27</sup> FEKETEKUTI MANKOVICS 1940. 160.
- <sup>28</sup> 16 April 1917, Judgement No. 1916 Hb. 59. See *Ibid.* 160., 165.
- <sup>29</sup> 4 October 1909, Judgement No. Hb. 55. See *Ibid.* 166–168.
- <sup>30</sup> For more on the judicial nature of patent authorities, see PAPP, László: *A szabadalmi jogvédelem történeti perspektívái [Historical Perspectives of Patent Protection]*. Budapest, 2015. Gondolat Kiadó, 52–85.
- <sup>31</sup> 16 April 1923, Judgement No. 1922. Hb. 62. See FEKETEKUTI MANKOVICS 1940. 168–170.
- <sup>32</sup> *Ibid.* 158.
- <sup>33</sup> *Ibid.* 157.
- <sup>34</sup> *Ibid.* 142.
- <sup>35</sup> 21 October 1912, Judgement No. 1912. Hb. 43. See *Ibid.* 173.
- <sup>36</sup> 4 October 1909, Judgement No. 1909. Hb. 50. See *Ibid.* 173., 174.
- <sup>37</sup> 14 February 1910, Judgement No. 1909 Hb. 136. See *Ibid.* 174.



Animals and their associated images have been part of human culture since ancient times. Representation of animals are common in literature and art, so it is not surprising that depictions of animals appear as decorative elements in courthouses and their surroundings all over the world. The mystical bond between animals and mankind is the reason why there are notable animals that have been recognized for centuries as symbols of human judgement and justice in the history of legal culture.

In expressing the relationship between animals and humans, the qualities of animals are often used as a metaphor for people, and certain human characteristics can be illustrated by metaphors referring to animal behaviour.<sup>1</sup> Machiavelli formulated this in *The Prince* in the following manner: “A prince, therefore, being compelled knowingly to adopt the beast, ought to choose the fox and the lion; because the lion cannot defend himself against snares and the fox cannot defend himself against wolves. Therefore, it is necessary to be a fox to discover the snares and a lion to terrify the wolves. Those who rely simply on the lion do not understand what they are about.”<sup>2</sup>

Bódi Beliznai, Kinga

## Animal Ornaments of the Court Buildings

### 1. The lion

#### 1. 1. The lion as a symbol of power

Known as a symbol of power and rulership in ancient cultures, the lion has been closely associated with the court judgements since the Middle Ages.

The lion symbolizes valour, majesty, and protective power, as well as wisdom and animal strength. Among the virtues it is the attribute of justice, firmness, fortitude, and temperance, while among the vices it is the attribute of pride. A man wearing a lion's skin or holding it in his hand, a reference to Hercules (Heracles), is an epitome of excellence and heroic virtue.<sup>3</sup>

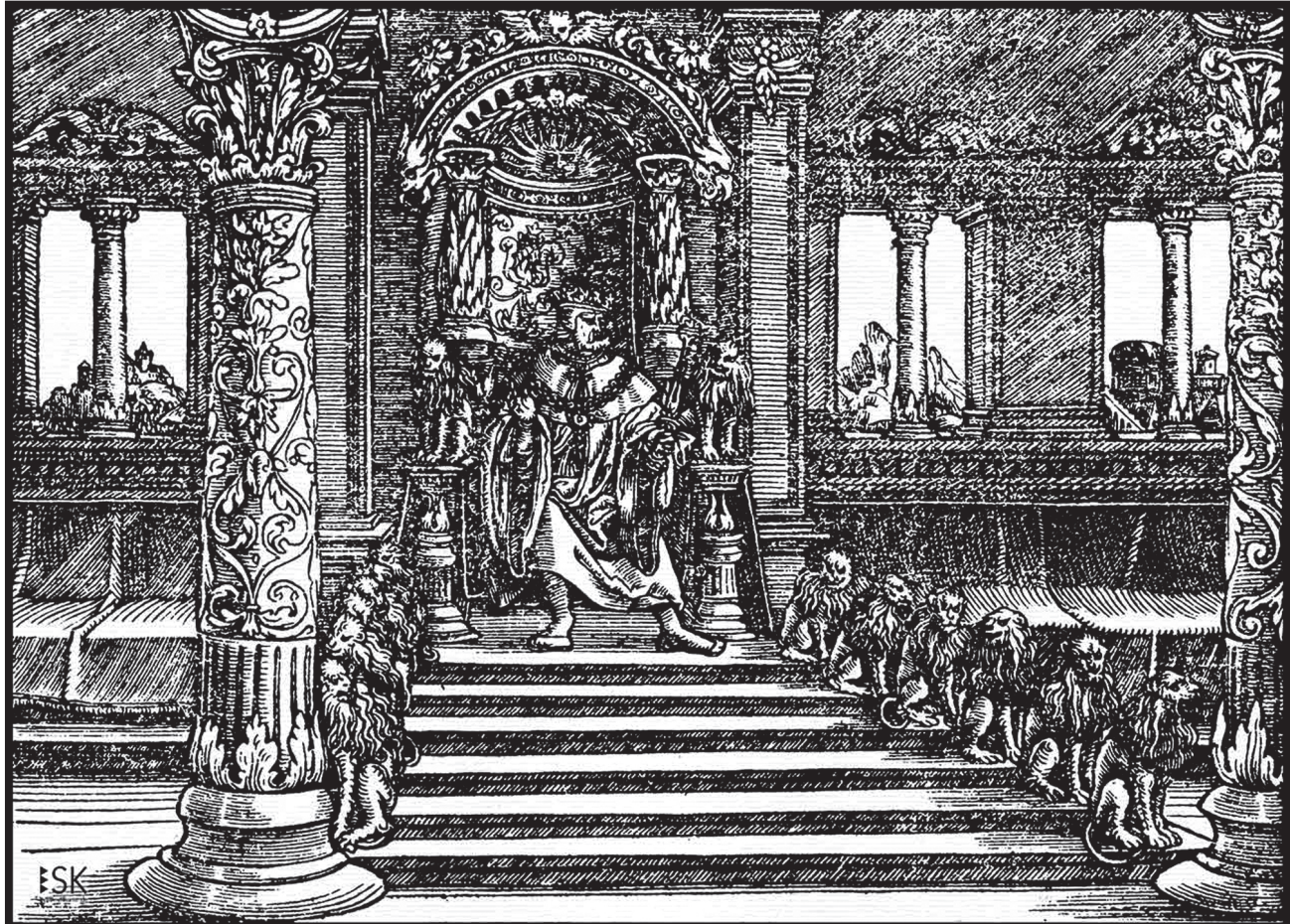
These characteristics have made it – alongside the eagle – one of the most used heraldic animals. The winged,

man-headed lion (Lamassu) was an Assyrian symbol, but “the king of animals” is also the emblem of Florence and Venice. Out of the Hungarian monarchs, Sigismund of Luxemburg had a lion – the Czech two-tailed one – on his coat of arms and seal,<sup>4</sup> and a prancing lion, holding a crown in his paw appeared on the coat of arms of Matthias.<sup>5</sup> The three lions engraved on the crystal globe of the Hungarian coronation sceptre are an ancient Eastern symbol of royal power. Lions surrounded the throne of King Solomon, the sage arbiter of the Old Testament. In the First Book of Kings (1 Kings 10:18-20), it is recorded that his magnificent throne, made of ivory and covered with gold, had six steps leading up to it. A lion stood beside both arms of the throne chair, and twelve on either side of the six steps.

A polished capital carved from sandstone and mounted atop a pillar more than 15 metres high in Sarnath, India, dates from around 250 BC. The pillar bears the edicts of King Ashoka (268–232 BC), which include his proclamation of himself as a just king who fascinates the whole world. On 26 January 1950 – the “birthday” of the republic – the capital, with its four sublime lions facing the four cardinal points, was raised to the status of India’s national symbol. The frieze running around the lions shows a picture of an elephant, a zebu, a horse, and another lion, separated by the Buddhist symbol of the spoked wheel (*dharma chakra*).

The Supreme Court of India, set up under the 1950 Constitution and sitting for the first time on 28 January 1950, opted for the Lion capital as their logo, albeit with two important differences. The first is that below the national symbol the “*Satyamev Jayate*” (सत्यमेव जयते), while below the logo of the Supreme Court the “*Yatodharma Stato Jaya*” (यतो धर्मस्ततो जय) inscription can be read in Sanskrit. The first means “truth alone triumphs” while the second means “whence dharma (law), thence victory”.<sup>7</sup> The other distinction is that in the logo of the Supreme Court, above the lions’ heads, there is a very important legal symbol, the “wheel of justice”, which refers to justice, goodness and fairness, and even, in a further interpretation, to the acceptance of the idea of the rule of law by the members of the court.<sup>8</sup>

In the Supreme Court courtrooms, the Indian national emblem is displayed on the wall behind the judges’ chairs, symbolising not only the legitimacy of the judiciary, but also the conferment of the state’s judicial power on the judges. Above the entrance to the courtrooms, the national emblem reads “truth alone triumphs”, suggesting that those who enter the court should follow the path of truthfulness, because eventually truth will prevail.<sup>9</sup> This also refers to the duties and responsibilities of the judge.<sup>10</sup>



The throne of King Solomon<sup>6</sup>

## 1. 2. The lion as a judicial symbol

The lion or lion's head has been known since the Middle Ages as a symbol of the supreme forum of judgement,<sup>11</sup> so the judges of the supreme courts were often portrayed with a lion at their feet, and it could also mark the place where the adjudication or the execution of sentence was located. In the centre of Bonn, a column, probably from Roman times, with a lion on it can still be found today, which was traditionally considered to symbolise the judicial power of one of the prince-electors, the Archbishop of Cologne.<sup>12</sup>

In Rome, a group of statues originally installed under the loggia of the Senatorial Palace (*Palazzo Senatorio*), depicting a lion triumphant over a horse, symbolised victory over the rival Tivoli,<sup>13</sup> and gave place to the public exposure of malefactors and the pronouncement of death sentences.<sup>14</sup> The triumph of the lion, symbolising the Senate, over the papal "caballus" was also a reference to the relationship between secular and ecclesiastical justice.<sup>15</sup> The lion heads on the Capitoline, as guardians of law and justice, represented the supreme judicial power exercised by the Senate. The lion-lined arcades of the temples could also be used as a place of judgment.<sup>16</sup> A record dating from 1140 states that court trials were regularly held at the south gate of Ferrara Cathedral, "among the lions".<sup>17</sup>

The lion referred to the good judge, who must remain wise and strong throughout the trial, whose decision-making cannot be swayed or influenced by neither threats nor pleas.

Justitia or the judge was often pictured sitting on a lion, legs crossed. This was the posture required of the judge by the provisions of the medieval compilations of laws. According to the *Soester Gerichtsordnung* (Soest Court Rules) of 1350, the judge "must sit in the chair like a scowling lion, with his right leg crossed over the left".<sup>18</sup> The municipal law compilation of Buda – following the German model – similarly regulated the posture of the judge: he had to sit "with one leg on top of the other", which symbolised the tranquillity, seriousness and contemplation that were essential for a responsible judicial profession.

In Albrecht Dürer's etching *Sol iustitiae* (The Day of Justice), circa 1499, he represents Christ, the Judge of the world, seated on a lion embodying divine justice, with the sword and scales, the typical attributes of the Goddess of Justice. The image was inspired both by medieval illustrations of the judge, "the doer of justice", and by a statue seen in Venice, a capital in the Doge's Palace showing the planets [where the Sun (*Sol*) is seated on his own zodiacal sign, the lion].<sup>19</sup>

Wolfgang Schild, with whose opinion we agree, sees an obvious parallel between Dürer's judging Christ and the judge described in the Soest Court Rules. Christ himself is the scowling lion, who punishes the guilty, from whom no crime is hidden, who sees all and knows all. Christ, like Solomon, is the embodiment of the wise and fair judge.<sup>20</sup>

In the Venetian Republic, from 1310, following the unsuccessful Baiamonte Tiepolo-conspiracy to oust Doge

Pietro Gradenigo, letterboxes were introduced in Venice and other cities,<sup>21</sup> in which anyone could drop a secret denunciation, which could be used to bring charges if there was a reasonable suspicion. In each district (*sestiere*) of Venice<sup>22</sup> at least one letterbox was placed in the wall of a court or church or in the walls of the Doge's Palace. The close connection between justice and the lion is demonstrated by the fact that many of these wooden and later metal letterboxes were carved in stone with the head of a lion (or a face hidden under a mask), into whose mouth the denunciation was to be thrown. Hence the name of the boxes: "the lion's mouth" (*bocca di leone*).

The keys to the letterboxes were kept by the members of the town magistrate and could only be opened by the heads of the districts (*capo di sestiere*). Each chief magistrate had his own letterbox, whether he was responsible for keeping the peace in the city, passing sentence in criminal cases, or working in the field of financial administration.<sup>23</sup>

The original idea was that the anonymous help of citizens, i.e., secret reports, could help uncover conspiracies and other crimes (mainly murder, robbery, blasphemy, smuggling, tax evasion, breaching health regulations). However, anonymity also gave way for envy, anger, and revenge. In order to prevent this, the Great Council (*Maggior Consiglio*) decreed on 5 May 1275 that all unsigned denunciations should be burned. From 30 October 1387, this provision was amended so that anonymous denunciations against private individuals were to be destroyed, but the ones concerning crimes against the Republic of Venice or conspiracies to cause serious damage to the state were to be handed over to the Council of Ten (*Consiglio dei Dieci*), which would judge and decide on the cases.<sup>24</sup> On 30 August 1542, it was decreed that in the case of blasphemy, an anonymous denunciation should be examined by the council only if the suspicion of the crime was confirmed by three witnesses – one of whom could be the denouncer himself – who had been present at the alleged crime.<sup>25</sup>

"The lion's mouth" was therefore primarily aimed at maintaining the peace in the city. The system remained in place, with rules modified from time to time, until the end of the Republic in 1797, and although most of the letterboxes were destroyed, some can still be seen while strolling the streets of Venice.<sup>26</sup>

One of the main sights of the southern Italian Bari, and a symbol of the city by now, is the unique pillory that stands in the old town's market square (*piazza Mercantile*), which also brings us a perfect testimony to the close link between the lion and jurisdiction. At the foot of the white marble pillar of justice (*colonna di giustizia*) a lion lies with the inscription *Custos Iustitiae*, meaning "guardian of justice", on his chest.

The history of the pillory can be traced back to the 16<sup>th</sup> century: Armando Perotti (1865–1924), on the basis of local historical research, concluded that it was erected around 1546 by the Spanish Viceroy Don Pedro Álvarez de Toledo of Naples (1532–1553).<sup>27</sup> The pillory was used to publicly shame insolvent debtors and bankrupts. According to Giulio Petroni, the punishment was carried out

by placing the malefactor on the back of the lion and tying him by the neck to the pillar with a chain.<sup>28</sup>

However, the lion statue itself existed long before that, originally as an ornament and protector of a Roman tomb, and only later moved to the market square, next to the pilory. In the 11<sup>th</sup> and 12<sup>th</sup> centuries, during the Norman conquests, it was considered the city's apotropaic defender.

Works of art also allude to the bond between the lion and justice. The German sculptor Albert Wolff (1814–1892) created a group of sculptures of a lion defending his cubs from a giant serpent (*Löwe, seine Jungen gegen eine Schlange verteidigend*) erected after the artist's death in June 1895<sup>29</sup> in the Moabit district of Berlin, in front of the square of the Criminal Court (*Kriminalgericht*, now *Amtsgericht Tiergarten*) at the time. Hermann Müller-Bohn, in his book about Berlin's monuments (1905), saw the group of statues as a symbol of the victorious struggle of the lion of justice against the lies and injustice that had taken the form of a serpent.<sup>30</sup>

The work entitled *Equal before the Law* by Canadian sculptor and photographer Eldon Garnet (1946–) is in McMurtry Gardens of Justice in Toronto.

The sculpture depicts a scale with a life-size lamb at one end and a life-size lion sitting at peace at the other. Although one of the animals is small and the other is large, one is weak and the other is strong, the scales remain in balance, symbolising the fact that everyone must be "weighed" equally on the scales of justice.<sup>31</sup>

The lamb is a symbol of gentleness, innocence, purity, and sinlessness. In the justice system, the lion, representing the good judge, is also a symbol of strength, courage, and power. The combination of the lamb and the lion recalls the prophecy of the prophet Isaiah (Isaiah 11:6): "The wolf will live with the lamb, the leopard will lie down with the goat, the calf and the lion and the yearling together [...]." But in medieval iconography, following Virgil, the lamb and the lion lying together, "naturally different in their morals", also embody peace, "the concord of various wills".<sup>32</sup>

On Garnet's artwork, the pillar holding the scales reads in English and French Section 15 of the *Canadian Charter of Rights and Freedoms*, which states that everyone is equal before the law. Every individual has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.<sup>33</sup>

The sculptor achieved perfect proportions and balance by combining the laws of physics and geometry. If you look closely, you can see that the lion is closer to the centre, while the lamb is much further away. This points to the imperative need to eliminate inequalities before the law. The complex form of the balancing pole is a symbol of law and justice, since ensuring equal rights for litigants is in practice a difficult and complex task requiring constant reflection and evaluation.

## 2. The Gallic Rooster

The rooster represents the rebirth of the sun and the soul, as well as pride and courage in most cultures, while the weathercock on the top of Christian churches is a symbol of vigilance against evil.

In the Palace of Justice in Paris (*Palais de Justice*), the entrance from the lobby to the Galerie Marchandepassage is decorated with a statue of Hermes and Hestia, sitting on the left and right of the book of laws, which represents justice and law, and a rooster is found at the feet of the goddess, representing the light and the judge's power to create justice and to do justice.<sup>34</sup>

The Gallic Rooster (*gallus gallicus*), the symbol of the French, was born with the expansion of Renaissance culture. Already the Romans associated the words *gallus* "rooster" and *Gallus* "Gaul". France began to be associated with the rooster at the end of the 15<sup>th</sup> century, when historians discovered its Gallic ancestry and revealed that the animal had been revered in antiquity as the sacred bird of Jupiter and Mercurius. In the 1490s, a book dedicated to King Charles VIII of France was published in Italy<sup>35</sup> with an illustration of a white rooster trampling the lion and fox, the enemies of France. Francis I, who ascended to the throne in 1515, was born on 12 September, the astrological sign of the rising Mercury, so it was only natural that his symbol should be the sacred animal of Mercurius, the embodiment of light and victory.<sup>36</sup> By the middle of the 16<sup>th</sup> century, the different traditions had merged: the bird on the roof of churches was identified with the French king, the dynastic state and the emerging nation as a symbol of courage, light and victory.<sup>37</sup> The French Revolution chose the rooster as its war emblem, combining the meaning of the French nation as a warrior and the meaning of the rooster as a symbol to ward off darkness by crowing. The spread of the rooster symbol was also helped by France's opponents. The Peace of Crépy in 1544 was celebrated with an engraving of eagles, representing the German–Roman Emperor Charles V, defeating a rooster. The rooster later appeared on coins, then on the entrances to public buildings, on monuments, stamps and, in 1951, on the official badge of mayors.<sup>38</sup>

The *Palais de Justice* is also home to the Court of Appeal of Paris (*Cour d'Appel de Paris*), which has its criminal chambers and courtrooms on two floors. The staircase connecting the two levels is decorated with roosters. At their feet is a bundle of rods with leather straps, with an axe in the middle. The bundle of rods (*fasces*), with its occasional two-edged axe, was a symbol of the official and punitive power of the Roman magistrates. The death penalty was executed by the *lictors*, free but paid officials who carried the fasces.<sup>39</sup>

A recent case in French justice is linked to a rooster called Maurice and the commune of Saint-Pierre-d'Oléron. Maurice became famous and was in the news in July 2019 when neighbours filed a lawsuit against the rooster and his owner, claiming that he was causing a nuisance by crowing at dawn and constantly disturbing the peace of the neighbourhood. The court hearing the case (*tribunal de*

*grand instance de Rochefort*) dismissed the neighbours' claim and ruled that Maurice was free to "continue singing". The complainants even had to pay compensation of €1,000 to Corinne Fesseau, the owner of the rooster.<sup>40</sup>

The case has also become a symbol of the conflicts between "natives" and newcomers to a rural settlement, as many of the actions are based on the sounds and smells of the countryside. The controversy, which has attracted international press attention, has coincided with a media campaign to protect the sounds and smells of the countryside. On 29 January 2020, the French National Assembly voted in favour of a Bill to introduce into French law the concept of "*patrimoine sensoriel*", which aims to preserve and express the characteristic sounds and smells of the countryside.<sup>41</sup> The Bill was discussed and voted on by the Senate on 21 January 2021 without amendment.<sup>42</sup> The law on the protection of the values of the French countryside (*Loi n° 2021-85 du 29 janvier 2021 visant à définir et protéger le patrimoine sensoriel des campagnes françaises*) was published in the official journal on 30 January 2021 (*Journal Officiel de la République Française*).

### 3. The ostrich

The Egyptian goddess Maat is one of the decorative elements on the main façade of the "huge palace of classicist architecture", which today houses the Curia, the Office of the Prosecutor General, and the Regional Court of Appeal of Budapest, designed by architect Sándor Fellner (1857–1944) and originally built between 1913 and 1918 for the Ministry of Justice.

Maat is the embodiment of truth, justice, law, and perfect balance,<sup>43</sup> whose characteristic attribute is the ostrich plumage<sup>44</sup> which appears in her headdress or wings. Pierioni Valeriano (1477–1558) in his *Hieroglyphica...*<sup>45</sup> writes that "the paddle-like feathers of the ostrich, like perfect verity, are the same length".<sup>46</sup>

In medieval allegorical art, the ostrich also appears on the side of the female figure with white robe representing justice, suggesting that however complicated the cases brought before the justice system, sufficient time and ef-

fort should be spent "untangling" them, just as "the ostrich digests iron".<sup>47</sup>

Giorgio Vasari's (1511–1574) *Allegoria della Giustizia* (1543), commissioned by Cardinal Alessandro Farnese, shows Justitia's right arm resting on an ostrich.<sup>48</sup> With its long neck and slow digestion, the ostrich also symbolises the need for patience in the face of any challenge, especially for the judge.<sup>49</sup>

### 4. The serpent

Among the justice-related symbols in different cultures, the serpent has many and often contradictory meanings. It is a recurring motif in myths, art, and religion, representing life, death, resurrection, sacred knowledge, and the afterlife.

In Cesare Ripa's *Iconologia*, the judge, seated in dignified attire, holds a wand in his right hand, around which is coiled a serpent, a sign of the cleverness expected of men in power. In the New Testament, according to the Gospel of Matthew (Matthew 10:16) "so be wise as serpents!" As the animal of Pallas Athena (Minerva), who is also associated with judgement<sup>50</sup>, it symbolises the alliance of wisdom, reason, and strength.<sup>51</sup> However, in the Gospel of John (John 8:44), the serpent, the devil's incarnation, is portrayed as "the father of lies".

And a modern example that perfectly illustrates the meeting of tradition and the present. On 26 October 2014, the new courthouse in Kununurra, Western Australia, was inaugurated. The architects designed the building in collaboration with local indigenous people, and the design was formed through public consultations. The 2,000 m<sup>2</sup>, two-storey facility has been designed to fit in perfectly with the surrounding natural environment and the indigenous people's way of seeing the world. This ambition is enhanced by the use of wood, stone cladding and colours, various shades of rust brown, natural light, and the unrivalled views. The interiors of the building are decorated with works by more than twenty local (*Miriwoong*) artists. A carved timber handrail at the base of the stairs depicts two intertwined serpents<sup>52</sup> symbolising the coexistence of laws and customs of Aboriginal and Australian culture.<sup>53</sup>

### Notes and references

<sup>1</sup> KARÁCSONY, András: Állatok és emberek a metaforák útján [Animals and humans through metaphors]. In *A személyiség burkai. Írások, tanulmányok a 60 éves Majtényi László tiszteletére [The shells of personality. Writings, studies in honour of the 60<sup>th</sup> anniversary of László Majtényi]*. Budapest, 2010. Eötvös Károly Intézet, 171–172., 175.

<sup>2</sup> MACCHIAVELLI, Niccolò: *The Prince*. Translated by MARRIOTT, W. K. 1998. [www.gutenberg.org/files/1232/1232-h/1232-h.htm#chap18](http://www.gutenberg.org/files/1232/1232-h/1232-h.htm#chap18).

<sup>3</sup> RIPA, Cesare: *Iconologia*. Translated by SAJÓ, Tamás. Budapest, 1997. Balassi Kiadó, 596.

<sup>4</sup> KÖRMENDI, Tamás: Sas és oroszlán. Hogyan használta Zsigmond király politikai propagandára a magyarországi pénzverést? [Eagle and lion. How did King Sigismund use the coinage in Hun-

gary for political propaganda?]. *Havi Színes*. 2019. november 29. [Monthly Colour, 29 November 2019], MTA Bölcsészettudományi Kutatóközpont „Lendület” Középkori Magyar Gazdaságtörténet Kutatócsoport [“Impetus” Research Group for Medieval Hungarian Economic History, Research Centre of Arts, Hungarian Academy of Sciences]. <https://tti.btk.mta.hu/lendulet/kozepkori-gazdasagtorten-et/havi-szines/3896-sas-es-oroszl-an.html>.

<sup>5</sup> In addition, Matthias and the lions were symbolically linked in the eyes of his contemporaries. In Florence, Matthias's envoy, István Bajoni, said that his lord would be pleased with a lion, and the Signoria sent him "the ancient emblem of the Florentine people" as a sign of good relations. According to Bonfini, when Matthias died in Vienna in 1490, his lions died the same day, as if sensing the death of their lord. BITSKEY, István: Tradíció és reprezentáció. Hu-

- manista szerzők Mátyás király udvari ünnepeiről [Tradition and representation. Humanist authors on court feasts of King Matthias]. *Irodalomtörténet [History of Literature]*, No. 2–3, 1995. 327–328.
- <sup>6</sup> Woodcut from the Luther Bible (c. 1545). [www.stilkunst.de/c22\\_biblia1545/img-b1545/ikon10\\_1280.jpg](http://www.stilkunst.de/c22_biblia1545/img-b1545/ikon10_1280.jpg).
- <sup>7</sup> KUMAR, Shailesh: Interpreting the Scales of Justice: Architecture, Symbolism and Semiotics of the Supreme Court of India. *The International Journal for the Semiotics of Law*, Vol. 4, 2017. 20. <https://eprints.bbk.ac.uk/id/eprint/26224/2/SELA-S-16-00056.pdf>
- <sup>8</sup> Ibid. 20.
- <sup>9</sup> Ibid. 20–21.
- <sup>10</sup> In the spring of 2013, Rahul Mohod filed an appeal under the *Right to Information Act 2005* with the Central Information Commission seeking an answer to the question of why the Supreme Court does not display the motto of the national emblem on its logo. The request was made after the authorities in the first instance had failed to reach a decision on the merits of the case and the applicant had not received a reply to his question. The Appeals Committee sought clarification as to the law, guidelines, or other provisions on which the court based its decision on the motto. For the record of the appeal hearing, Rahul Mohod vs CPIO File No. CIC/SM/A/2012/001491 Right to Information Act 2015 Under Section (19), see [www.casemine.com/judgement/in/574c3cd5e561090f2a0efe5e](http://www.casemine.com/judgement/in/574c3cd5e561090f2a0efe5e); [www.rtfoundationofindia.com](http://www.rtfoundationofindia.com). However, despite formal requests and proceedings, the question has not been satisfactorily answered to date. PTI: CIC to Supreme Court: Explain reasons behind your logo. *The Indian Express*, 28. 3. 2013. <http://archive.indianexpress.com/news/cic-to-supreme-court-explain-reasons-behind-your-logo/1093191/>; GUPTA, Sonal: Supreme Court of India changed its motto? No, viral claim is false. *The Quint*, 24. 8. 2020. [www.thequint.com/news/webqoof/supreme-court-of-india-changed-its-motto-no-viral-claim-is-false](http://www.thequint.com/news/webqoof/supreme-court-of-india-changed-its-motto-no-viral-claim-is-false).
- <sup>11</sup> HUHN, Vital: Löwe und Hund als Symbol des Rechts. *Mainfränkisches Jahrbuch für Geschichte und Kunst*. Bd. 7. Sonderdruck. Würzburg, 1955. Freunde Mainfränkischer Kunst und Geschichte E. V. 62.
- <sup>12</sup> Bonner Stadtgeschichte. [www.bonn.de/themen-entdecken/bildung-lernen/bonner-stadtgeschichte.php](http://www.bonn.de/themen-entdecken/bildung-lernen/bonner-stadtgeschichte.php).
- <sup>13</sup> NOEHLES, Karl: Die Kunst der Cosmaten und die Idee der Renovatio Romae. *Sonderdruck* aus FIENSCH, Günther – IMDAHL, Max (Hrsg.): *Festschrift Werner Hager zum 65. Geburtstag*. Recklinghausen, 1966. Verlag Aurel Bongers, 21.
- <sup>14</sup> The sculptural group (*Leone che azzanna il cavallo*) can be seen in the Capitoline Museums (*Musei Capitolini*).
- <sup>15</sup> SCHULZE, Ulrich: Triumph und Apokalypse. Anfänge venezianischer Herrschafts- und Rechtsikonographie. *Marburger Jahrbuch für Kunstwissenschaft*, Bd. 22. 1989. 188.
- <sup>16</sup> Judging under the arcades was a transition between the open air and the enclosed spaces (town halls, courtrooms), while at the same time providing protection from the weather. The semi-open trials were also a means of publicity.
- <sup>17</sup> DE APPOLONIA, Giovanna: Justice and judgement in the Romanesque column-bearing lions of Northern Italy. *Ikon*, Vol. 2, 2019. 168.
- <sup>18</sup> BRÜNNECK, Wilhelm von: Zum Verständnis des Titel 1 der Soester Gerichtsordnung. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 1911. Bd. 32. 332. <http://dlib-zs.mpiers.mpg.de/pdf/2085091/32/1911/20850913219110340.pdf>. But the proper posture required of a judge is not only described in detail in municipal law books, but in the absence of such books, it can also be seen in contemporary art. MAUER, Georg Ludwig: *Geschichte des altgermanischen und namentlich altbairischen öffentlich-muendlichen Gerichtsverfahrens, dessen Vortheile, Nachtheile und Untergang in Deutschland ueberhaupt und in Baiern insbesondere*. Heidelberg, 1824. Akademische Buchhandlung von J. C. B. Mohr, 120.
- <sup>19</sup> PANOFKY, Erwin: Dürer és a klasszikus kor [Dürer and the classic era]. In Idem: *A jelentés a vizuális művészetekben. Tanulmányok [Meaning in the visual arts. Studies]*. Translated by TELLÉR, Gyula. Budapest, 2011. ELTE BTK Művészettörténeti Intézet, 46–47.
- <sup>20</sup> SCHILD, Wolfgang: Der griesgrimmige Löwe als Vor-Bild des Richters. *Medium Aevum Quotidianum* 27. 1992. 28.
- <sup>21</sup> The cities of Treviso or Bergamo can be mentioned as examples. FACCHINETTI, Alessandra: Le bocche delle denunce a Bergamo e qualche luogo comune da sfatare. 2019. [www.bergamodascoprire.it/2019/01/02/le-bocche-delle-denunce-a-bergamo-e-qualche-luogo-comune-da-sfatare](http://www.bergamodascoprire.it/2019/01/02/le-bocche-delle-denunce-a-bergamo-e-qualche-luogo-comune-da-sfatare).
- <sup>22</sup> Venice, like other cities in Italy (e.g., Genoa, Milan, Rappallo), was divided into six districts (*sestiere*).
- <sup>23</sup> CORRER, Giovanni – SAGREDO, Agostino – FRIULI, Nicolò – PASINI, Lodovico – CARRER, Luigi: *Venezia e le sue lagune*. Volume primo. Venezia, 1847. Nell' I. R. privil. Stabilimento Antonelli, 152.
- <sup>24</sup> The *Consiglio dei Dieci* was set up on 10 July 1310, following the Baiamonte Tiepolo-conspiracy. The court, which had exceptional jurisdiction in its original function, became more infamous in Venice as a kind of state security organisation, and was even authorised to observe the *Doge*.
- <sup>25</sup> PRETO, Paolo: *I servizi segreti di Venezia. Spionaggio e controspionaggio ai tempi della Serenissima*. Milano, 2010. Il Saggiatore, 168–169.
- <sup>26</sup> TOSO FEI, Alberto: *Un giorno a Venezia con i dogi. In giro per la Serenissima accompagnati dagli uomini che la resero grande*. Roma, 2017. Newton Compton Editori.
- <sup>27</sup> PEROTTI, Armando: Il leone di piazza Mercantile. *Corriere delle Puglie*, 14. 12. 1919.
- <sup>28</sup> PETRONI, Giulio: *Della storia di Bari dagli antichi tempi sino all'anno 1856*. Libri tre. Volume primo. Napoli, 1857. Stamperia e Cartiere del Fibreno, 111–112.
- <sup>29</sup> Albert Wolff presented a small sculptural group made of plaster in 1883 in Berlin at an exhibition at the Royal Academy of Arts, Berlin (*Königliche Akademie der Künste zu Berlin*). After his death, presumably due to the artist's popularity in decision-making circles and his long and conscientious work in the Prussian Land Art Commission (*Preußische Landeskunstkommission*), the state purchased this plaster model and the bronze sculpture, which can still be seen today, was based on this model. MAAZ, Bernhard: Wilhelm Wolff (1816–1887), der erste Berliner Tierbildhauer. *Forschungen und Berichte*, Bd. 29. 1990. 310. p. [www.jstor.org/stable/3881075](http://www.jstor.org/stable/3881075).
- <sup>30</sup> <https://bildhauerei-in-berlin.de/bildwerk/loewengruppe-2/>.
- <sup>31</sup> <http://artandthecourts.ca/en/garden/equal-before-the-law/>.
- <sup>32</sup> RIPA 1997. 450.
- <sup>33</sup> [www.mcgill.ca/dise/files/dise/cdn\\_rights.pdf](http://www.mcgill.ca/dise/files/dise/cdn_rights.pdf); Justice in a Fallen World. *Public Art of Toronto*. <https://publicartoftoronto.wordpress.com/2016/11/21/justice-in-a-fallen-world>.
- <sup>34</sup> Histoire du Palais. Visite illustrée du Palais de Justice de Paris. [www.cours-appel.justice.fr/paris/histoire-du-palais](http://www.cours-appel.justice.fr/paris/histoire-du-palais).
- <sup>35</sup> LEGONISSA, Johannes Angelus de: *Opus christianissimum, seu Davidicum...* 1497.
- <sup>36</sup> HAHNER, Péter: *Újabb 100 történelmi tévhit avagy amit biztosan tudsz a történelemről – és mind rosszul tudod... [Another 100 historical misconceptions or what you know about history – and you know it all wrong...]*. Budapest, 2011. Animus Kiadó, 19.
- <sup>37</sup> HAHNER, Péter: *Franciaország története [History of France]*. Budapest, 2002. Műszaki Kiadó, 70.
- <sup>38</sup> HAHNER 2011. 19.
- <sup>39</sup> SZLÁVIK, Gábor: Államhatalom és jelvényei Rómában. Tóga, tunika, vesszőnyaláb [State power and insignia in Rome. Toga, tunic, fasces]. *História [History]*, No. 5–6, 2003. 27.
- <sup>40</sup> MAYER, Claire: Au procès du coq Maurice et de sa propriétaire. “Tout le monde rit, mais derrière, nous avons un sujet sérieux.” *Le Monde*, 5. 7. 2019. [www.lemonde.fr/societe/article/2019/07/04/au-proces-du-coq-maurice-et-de-sa-propretaire-tout-le-monde-rit-mais-derriere-nous-avons-un-sujet-serieux\\_5485450\\_3224.html](http://www.lemonde.fr/societe/article/2019/07/04/au-proces-du-coq-maurice-et-de-sa-propretaire-tout-le-monde-rit-mais-derriere-nous-avons-un-sujet-serieux_5485450_3224.html). L., Ph.: Ile d'Oléron: le coq Maurice va pouvoir continuer à chanter. *Le Parisien*, 5. 9. 2019.

[www.leparisien.fr/societe/ile-d-oleron-le-coq-maurice-va-pouvoir-continuer-a-chanter-05-09-2019-8145924.php](http://www.leparisien.fr/societe/ile-d-oleron-le-coq-maurice-va-pouvoir-continuer-a-chanter-05-09-2019-8145924.php).

<sup>41</sup> Proposition de loi visant à définir et protéger le patrimoine sensoriel des campagnes françaises. [www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000041502435/](http://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000041502435/).

<sup>42</sup> [www.senat.fr/dossier-legislatif/ppl19-286.html](http://www.senat.fr/dossier-legislatif/ppl19-286.html).

<sup>43</sup> SPINETO, Natale: *Szimbólumok az emberiség történetében* [Symbols in the history of humanity]. Budapest, 2003. Officina '96 Kiadó, 49.

<sup>44</sup> KÁKOSY, László: *Az ókori Egyiptom története és kultúrája* [History and culture of the ancient Egypt]. Budapest, 1998. Osiris Kiadó, 352.

<sup>45</sup> VALERIANO BOLZANI, Giovanni Pierio: *Hieroglyphica, sive, De sacris Aegyptiorvm literis commentarii*. Basileae, 1556. 178. <https://archive.org/details/desacrisaegyptio00vale/page/n3/mode/2up>.

<sup>46</sup> But a parallel can also be drawn between the ostrich burying its head in the sand and the negligent, biased judge. See in detail GOODRICH, Peter: *Imago Decidendi: On the Common Law of Images*. Leiden–Boston, 2017. Brill, 52–53.

<sup>47</sup> RIPA 1997. 238.

The ostrich as a symbol of truth is also referred to by Pliny the Elder in his history of nature (*Historia Naturalis*). Ripa also quotes from it. See PLINIUS, Caius Secundus: *Historia Naturalis*. L. 10. C. 1.

The alleged ability of the “camel-bird” to digest iron is the reason why the ostrich biting a horseshoe appears on coats of arms and seals, as well as on the badges of medieval blacksmith guilds. The legend dates back to the Numidian Wars, when on the African theatre of war, King Jugurtha’s light troops of Moors saddling on ostriches defeated the Roman cavalry, who were having difficulty moving across the sand of the desert. The Romans attributed their defeat to the magical powers of the mighty running birds. This later gave rise to the myth of the fight between the horse and the ostrich, where the ostrich swallows the enemy horse and leaves only the horseshoe in its beak. BERTÉNYI, Iván – FEISZT, György: Vas megye címerei és zászlai [Coat of arms and seals of county Vas]. In FEISZT, György (ed.): *Magyarország öniszgatási jelképeit bemutató kézikönyvek. I. kötet* [Handbooks on the symbols of self-government in Hungary. Vol. I.]. Kemendollár, 2004. Akvirál '96 Kft. 34–35.

<sup>48</sup> When depicting the attributes of Justitia, Vasari is obviously referring to an earlier depiction of Justitia, namely one of Raphael’s works, probably one of his last (1520), which is on display in its original splendour in the Vatican Museums (*Musei Vaticani, Sala di Costantino*). The fresco has long been attributed to Giulio Romano (1499–1546) or Giovanfrancesco Pennini (1488–1528), both

of whom were pupils of Raphael, but in June 2017 Italian restorers established with absolute certainty that the Justitia is a work by Raphael (Amicizia e Giustizia, il Raffaello ritrovato. *Vatican Magazine*, 30 giugno 2017; [www.vaticannews.va/it/vaticano/news/2020-05/musei-vaticani-raffaello-sala-costantino-restauro-arte-500.html](http://www.vaticannews.va/it/vaticano/news/2020-05/musei-vaticani-raffaello-sala-costantino-restauro-arte-500.html)), even though Vasari himself had already referred to it as the work of the master in his *Le vite de’ più eccellenti pittori, scultori e architettori*. And the same claim was made in the early 19<sup>th</sup> century by the French architect, archaeologist, and art critic Quatremère de Quincy (see QUINCY, Quatremère de: *Istoria della vita e delle opere di Raffaello Sanzio da Urbino*. Ed. LONGHENA, Francesco di. Milano, 1829. Francesco Sonzogno, 393–394).

<sup>49</sup> In Vasari’s allegorical depiction of Justitia, a hippopotamus appears at the end of a sceptre held in her right hand, which, according to Valeriano’s *Hieroglyphica*, “when it grows up, it covets its mother and therefore, despite all its resistance, kills its own sire”. Vasari associates the hippopotamus with the impartial judge, who shows no mercy even to those closest to him. ANNO, James P.: “L’Allegoria della Giustizia” di Giorgio Vasari. Osserva il dipinto nei dettagli. <https://artsandculture.google.com/exhibit/l-allegoria-della-giustizia-di-giorgio-vasari-museo-e-real-bosco-di-capodimonte/zQIC9Et8vAoNLg?hl=it>.

Vasari relied on the advice and guidance of the prelate Paolo Giovio (1483–1542), a historian, to visualise the sophisticated symbolism of the whole work. In January 1543, he wrote a long letter to Cardinal Farnese, detailing the symbolism of the painting.

<sup>50</sup> Athena (Minerva) was said to have three heads: with one she gives advice, with the other she judges, and with the third she acts virtuously. Another characteristic attribute is the eagle-owl pulling his chariot and his shield decorated with the gorgon’s head. RIPA 1997. 524.

<sup>51</sup> PÁL, József – ÚJVÁRI, Edit (ed.): *Szimbólumtár. Jelképek, motívumok, témák az egyetemes és a magyar kultúrából* [Symbol catalogue. Symbols, motifs, themes from universal and Hungarian culture]. Budapest, 1997. Balassi Kiadó, 260.

<sup>52</sup> ANTHONY, Thalia – GRANT, Elizabeth: Courthouse Design Principles to Dignify Spaces for Indigenous Users: Preliminary Observations. *International Journal for Court Administration*, No. 1, 2016. 53.

<sup>53</sup> This article is published as part of the research project of the MTA–ELTE Legal History Research Group of the Hungarian Academy of Sciences at the Department of Hungarian State and Legal History of Eötvös Loránd University, Budapest. The Research Group is a member of the Eötvös Loránd Research Network (ELKH).



## 1. Introduction

The stakes for the internet have been rising since the mid-2000s: “The debate on platform regulation picks up in 2014. First, with the fall-out from the Facebook/WhatsApp deal,<sup>1</sup> which kick-started a public debate on mergers and acquisitions by digital platforms. Then in 2018, the Cambridge Analytica scandal<sup>2</sup> ramps up the volume of the debate on privacy by large platforms and provides the political lever for starting to design regulatory frameworks for the big digital platforms, at least in Europe.”<sup>3</sup> As a result, regulation of the internet (and within it, the platform providers that underpin social media) now seems more realistic than ever before. This paper examines how the United States of America and the European Union have attempted to regulate new media’s

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liability issues-, and how the codification processes set up two different types of liability regimes twenty to twenty-five years ago.

## 2. Communication Decency Act

The myth of a “lawless space”<sup>4</sup> in the context of Internet regulation quickly dissipated, and it became increasingly apparent that, in line with US litigation patterns, Internet companies would be exposed to lawsuits in which they would be held liable for providing a forum for infringing content. The litigation costs and also the penalty imposed would make it impossible for them to grow.

In the first key case, Don Fitzpatrick published a daily newsletter in the early nineties called “Rumorville”, which published news and gossip about journalists and the industry they worked in. The newsletter was available to CompuServe users who subscribed to the CompuServe journalists’ forum. Robert Blanchard and his company Cubby developed a similar newsletter called “Skuttlebut”. Cubby sued both Fitzpatrick and CompuServe for spreading false information<sup>5</sup>. The reason for suing CompuServe was that Cubby claimed that it was acting as a publisher and was therefore responsible for its content. The Court found that since CompuServe had no prior knowledge of the content that Fitzpatrick would be publishing on “Rumorville”, it was merely a distributor, not a publisher. The Court ruled that “CompuServe has no more editorial control over such a publication than does a public library, bookstore, or newsstand”<sup>6</sup>.

A few years later, in the autumn of 1994, on a then trendy forum (belonging to the company called Prodigy) an unknown user made comments about Stratton Oakmont and its president, Daniel Porush, that they were committing fraud. The company and its president sued the anonymous author of the comment.<sup>7</sup> The legal question was whether Prodigy was a publisher, in which case it would be liable for the content posted on it even if it did not upload it, or merely a distributor, in which case it would be exempt from liability and the person who uploaded the content would bear the consequences alone. In the court proceedings, Prodigy was found to have guidelines for users on what content is not desirable, to employ human moderators and to have a (rudimentary but functioning) filtering system to weed out offensive content. Although the Court noted in its judgment that forums in principle should be considered merely distributors, in the given case, Prodigy was ruled as a publisher because of its editorial activity in relation to the forum, which provides it a liability.

The divergent judgments in the two cases raise the question of whether it is worthwhile to moderate or censor since if the internet company does not do so, it is merely a distributor and having exemption from liability. This problem, however, contradicts the need to curb inappropriate content on the Internet, since the lack of law and liability would have perpetuated the Wild West (or, in Alfred C. Yen’s words, the “western frontier”<sup>8</sup>), where anything goes. The decisions have stirred up the American legal community.

To solve this problem, Republican Chris Cox and Democrat Ron Wyden proposed an amendment to the Telecommunications Act.<sup>9</sup> The Telecommunications Act was a huge step forward in itself, amending the Com-

munications Act of 1934 after sixty years and providing a new set of rules for a significantly changed communications environment. For the first time, the Internet appeared as a subject of regulation,<sup>10</sup> but the key was the Cox-Wyden section, which was incorporated as Section 230(c)(1) of the Act (commonly known as the Communications Decency Act, CDA).<sup>11</sup> Twenty-six short words in English completely rewrote the history of the Internet:<sup>12</sup> “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” In addition, Section 230(c)(2) also includes “good Samaritan” protections against civil liability for the removal or moderation of speech they deem obscene or offensive, even constitutionally protected speech, if the providers act in good faith.

With these two regulatory solutions, the state in the 1990s effectively privatised freedom of expression and the decisions to remove illegal or harmful content. If we simplify it, we can say that all the means to remove content were in the hands of the service providers if they acted in good faith. “It gave internet startups and their investors the confidence that they could fill their platforms with content from ordinary users, without attracting any legal liability for anything those users might write.”<sup>13</sup> Doesn’t take much courage to say that this legislation has, at the same time, enabled the Internet to develop and grow exponentially over the last two decades. It has also meant progress, but it has also embedded the present problems: if providers considered that a user or a piece of content was not in their interests, they had the legal power to remove it. It was not called censorship, but in reality, that is what happened. And it is the same with the infamous paedophile comments on YouTube;<sup>14</sup> the Nazi paraphernalia sold on Amazon,<sup>15</sup> or the video footage of the Christchurch massacre.<sup>16</sup> Even though these companies have grown to unimaginable economic power, the CDA230 gives them almost unlimited loopholes – whether they restrict content or users upload unacceptable content. However, the flip side of the question is whether the aforementioned Wild West would really come without CDA230. Knowing the history of communication, let there be no doubt...

To answer the above, it is worth looking at the story of Kenneth Zeran through his court case.<sup>17</sup> After the Oklahoma City bombing, an unknown person began selling a T-shirt with a message about the bombing and a message on a forum saying, “Call Ken if you want one of these”. The phone number belonged to Zeran, who had no idea what had happened. To date, it has not been possible to find out who posted the message, but Zeran has received hundreds of threatening phone calls. Zeran has sued AOL for not doing everything possible to remove the original message and copies of it from its platform. AOL’s position was that CDA230 gives (almost) complete immunity for content uploaded by third parties, even if it knew the content was illegal. The US courts gave AOL the truth both at first instance and on appeal based on CDA230(c)(1) and did not consider the applicability of CDA230(c)(2). Thus, immunity appears to be complete.<sup>18</sup> However, it





*Social media liability<sup>22</sup>*

has been challenged<sup>19</sup> repeatedly over the years,<sup>20</sup> the need to amend the CDA will only become stronger after 2020, because, as Nicolas P. Suzor put it, platforms are “judges, juries and enforcers at the same time”.<sup>21</sup>

### 3. The TWF and AVMS Directives

The European internal market, also known as the single market, which was created on 1 January 1993, has brought many benefits to the then twelve – now many more – Member States and their citizens and, thanks to various agreements, it has also opened the European Economic Area (EEA) to other countries. The Single Market is based on the so-called “four freedoms”<sup>23</sup> – free movement of persons, services, goods and capital – enshrined in the Treaty on European Union.<sup>24</sup> Nevertheless, as Perry Keller writes, “the media sector has presented a huge challenge for the project of creating a European single market”.<sup>25</sup> However, the European Court of Justice has confirmed in several cases<sup>26</sup> that, as a general rule, no legal barriers to cross-border television broadcasting can be imposed. Under these circumstances – after long negotiations and discussions – the directive on cross-border television (Television without Frontiers, TWF)<sup>27</sup> was created. “The TWF Directive, the forerunner to the AVMS Directive, is the main regulatory instrument for the audiovisual sector in Europe.”<sup>28</sup> The Directive lays down two key points which have subsequently been used to regulate Internet services:

the principle of free movement of services and the country-of-origin principle.<sup>29</sup>

Already in the context of this Directive, what is different from the competition-based regulatory approach of the United States of America was apparent: the media in Europe play a prominent role in maintaining and transmitting democratic rules as well as in maintaining, developing, and disseminating cultural, social, and societal aspects. With all these principles in mind, while ensuring competition in the market, and with the exponential technological development of the industry, it became clear over time that “patching” the TWF would not yield satisfactory results, and a new directive was needed,<sup>30</sup> not only for the television segment but for the whole of the now audiovisual industry. In 2010, this became the Audiovisual Media Services Directive (AVMS),<sup>31</sup> in which the word “internet” appears only three times. Although the situation later changed with Video on Demand (VoD) and on demand audiovisual media services, it soon became clear that the rules on the internet could not be adequately addressed in the TWF-AVMS framework by “rewriting” the old rules.

### 4. The E-Commerce Directive

The regulation of internet services in Europe has not been without its problems. Already when the TWF was amended in 1997, it was suggested that the new audiovisual regulation should cover this area, but this proposal

failed in the European Parliament.<sup>32</sup> Thus a formal distinction has been created between traditional media services, where the provider determines the time for which content can be consumed, and Internet-based services, where the consumer can determine that. Thus was born the concept of “information society services”, which has become one of the key concepts in the twenty years since the adoption of the E-Commerce Directive<sup>33</sup> of 8 June 2000 (ECD), which still governs digital services today. The ECD stresses that the concept is not a product of the ECD itself,<sup>34</sup> as it was already found in earlier directives,<sup>35</sup> and provides a definition of the concept with a definitive purpose, i.e., what services are covered and what services are excluded. Furthermore, it stresses that “information society services span a wide range of economic activities which take place on-line”.<sup>36</sup>

This broad range includes:<sup>37</sup>

- selling goods on-line;
- offering on-line information or commercial communications;
- providing tools allowing for search, access and retrieval of data;
- transmission of information via a communication network;
- providing access to a communication network;
- hosting information provided by a recipient of the service;
- video-on-demand;
- commercial communications by electronic mail.

However, it does not include, among other things, the supply of goods or services off-line; the distribution of television or radio broadcasting or the use of electronic mail.<sup>38</sup> The ECD thus contributed to the proper functioning of the internal market by ensuring the free movement of information society services between Member States. As can be seen from the above list, Internet service providers (including the then-nascent community media services) were brought within the scope of the ECD in the early 2000s, rather than the TWF Directive. However, it is evident throughout from the careful wording of the regulation that it reflects “the policy consensus that the internet should not be brought under existing media regulatory regimes”,<sup>39</sup> thus bridging the gap between the early internet legal vacuum and traditional state regulation.

On a vital issue for the internet, namely who can be held liable for infringing content, the European Union

has developed a different regime from the CDA230 rules outlined above.<sup>40</sup> The core regulation in this question is Section 4 of the ECD, entitled “Liability of intermediary service providers”. The rules use a threefold set of definitions and the first two (“mere conduit”<sup>41</sup> and “caching”)<sup>42</sup> give service providers immunity from liability just like the US system. However, the more interesting issue is the liability of hosting service providers, for which rules are set out in Article 14 of the ECD. Under this, the provider is in principle responsible for the content hosted on it and is exempt from liability if:

- has no actual knowledge of illegal activity or information, and as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.<sup>43</sup>

The (relative)<sup>44</sup> novelty of the European system is, therefore, this so-called notice-and-takedown system (NTDS),<sup>45</sup> which has thus introduced a multi-stage system of conditions and procedures: the intermediary service provider must have a certain knowledge of content that is manifestly illegal and must take steps to remove it within a specified period.

## 5. Conclusion

After this brief overview, it can be concluded that the European Union has opted for a different model (also known as the “safe harbour model”)<sup>46</sup> from the US regulation, which focuses on an automatic exemption. Although many issues have been debated since the adoption of the Directive (such as when to declare that the service provider has actual knowledge; what is a manifestly illegal content; what is the time limit within which the service provider must act; are we talking about an active or passive type of service provider), it would be beyond the scope of this study to examine these questions in detail. However, we have to point out that those questions are crucial in determining whether content has been lawfully removed or whether there are censorship effects. The two paths that emerged in the 1990s and 2000s thus outlined different regulatory directions, but in the intervening years, it has become clear from international judicial practice that they are converging.

## Notes and references

<sup>1</sup> DEUTSCH, Alison L.: WhatsApp: The Best Facebook Purchase Ever? *Investopedia*, 26 June 2021. [www.investopedia.com/articles/investing/032515/whatsapp-best-facebook-purchase-ever.asp](http://www.investopedia.com/articles/investing/032515/whatsapp-best-facebook-purchase-ever.asp).

<sup>2</sup> HU, Margaret: Cambridge Analytica’s black box. *Big Data & Society*, July–December 2020, 1–6.

<sup>3</sup> ABATE, Serafino: A Reflection on a Decade of Regulating Digital Platforms – Will 2021 Be the Year of Internet Regulation Converging with Media and Telecoms Regulation? In WRIGHT, Emma (ed.):

*International Comparative Legal Guides. Telecoms, Media & Internet 2021, 14th Edition*. Global Legal Group, 2020.

<sup>4</sup> Institute for Public Policy Research: *Shared Destinies: security in a globalised world. the interim report of the ippr Commission on National Security in the 21st Century*. November 2008. [www.ippr.org/files/images/media/files/publication/2011/05/Security%20Commission%20Interim%20Report\\_1666.pdf](http://www.ippr.org/files/images/media/files/publication/2011/05/Security%20Commission%20Interim%20Report_1666.pdf).

<sup>5</sup> *Cubby, Inc. v. Compuserve Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991).

- <sup>6</sup> Ibid.
- <sup>7</sup> *Stratton Oakmont, Inc. v. Prodigy Servs.* (N.Y. Sup. Ct. May 24, 1995).
- <sup>8</sup> YEN, Alfred C.: Western Frontier or Feudal Society? Metaphors and Perceptions of Cyberspace. *Berkeley Technology Law Journal*, No. 4, 2002. 1210.; *IDEA – The Law Review of the Franklin Pierce Center for Intellectual Property*, No. 1, 2020. 134–148. In more details, see GOSZTONYI, Gergely: Az internet az új feudalizmus? [Is the internet the new feudalism?] *JOG.történet. Az MTA–ELTE Jogtörténeti Kutatócsoport (ELKH) blogja*, 18 October 2021. <https://mtajogtortenet.elte.hu/blog/gosztonyi-gergely-internet-feudalizmus>. Cf.: “In fact, the largest owners of private infrastructure are so powerful that we might even regard them as special-purpose sovereigns.” BALKIN, Jack M.: Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation. *UC Davis Law Review*, No. 3, 2018. 1153.
- <sup>9</sup> For details, see COX, Christopher: The Origins and Original Intent of Section 230 of the Communications Decency Act, *Journal of Law & Technology*, 27 August 2020. <https://jolt.richmond.edu/2020/08/27/the-origins-and-original-intent-of-section-230-of-the-communications-decency-act>.
- <sup>10</sup> Cf. however, “The word ‘internet’ appears only 11 times in that law, and 10 of them are in Section 230.” MILTON, Mueller: Updated Internet Regulations? *IG Institutions, Platform Governance*, 22 March 2021. [www.internetgovernance.org/2021/03/22/updated-internet-regulations](http://www.internetgovernance.org/2021/03/22/updated-internet-regulations).
- <sup>11</sup> It follows that although Section 230 is part of the Telecommunications Act, it is referred to in both the legal and the vernacular as CDA230, referring to Chapter V of the Communications Decency Act.
- <sup>12</sup> KOSSEFF, Jeff: *The 26 Words That Created the Internet*. New York, 2019. Cornell University Press.
- <sup>13</sup> REYNOLDS, Matt: The strange story of Section 230, the obscure law that created our flawed, broken internet. *Wired*, 24 March 2019. [www.wired.co.uk/article/section-230-communications-decency-act](http://www.wired.co.uk/article/section-230-communications-decency-act).
- <sup>14</sup> FRANCIS, Lizzy: The YouTube Paedophile Commenting Scandal, Explained. *Fatherly*, 17 July 2019. [www.fatherly.com/love-money/youtube-pedophile-comment-scandal-explained/](http://www.fatherly.com/love-money/youtube-pedophile-comment-scandal-explained/).
- <sup>15</sup> MARCHITELLI, Rosa: Amazon under fire for allowing sale of Nazi paraphernalia. *CBC*, 14 December 2015. [www.cbc.ca/news/business/amazon-accused-of-profiting-from-hate-1.3358259](http://www.cbc.ca/news/business/amazon-accused-of-profiting-from-hate-1.3358259).
- <sup>16</sup> MANDHANA, Niharika – HOYLE, Rhiannon: Facebook Left Up Video of New Zealand Shootings for an Hour. *The Wall Street Journal*, 21 March 2019. [www.wsj.com/articles/facebook-our-ai-tools-failed-to-catch-new-zealand-attack-video-11553156141](http://www.wsj.com/articles/facebook-our-ai-tools-failed-to-catch-new-zealand-attack-video-11553156141).
- <sup>17</sup> *Zeran v. America Online*, 129 F.3d 327 (4th Cir. 1997).
- <sup>18</sup> However, it should be stressed that “The private platforms regulated or protected by Section 230 are not government actors and therefore are not subject to First Amendment constraints. But, like the First Amendment, Section 230 operates as a constraint on defamation law.” COHEN, Todd – DREBEN, Michael – DRUMMOND HANSEN, Melodi et alii. (eds.): *CDA Section 230: Its Past, Present, and Future*. 2021, O’Melveny. [www.omm.com/omm\\_distribution/momentum/CDA\\_Section\\_230.pdf](http://www.omm.com/omm_distribution/momentum/CDA_Section_230.pdf), 5.
- <sup>19</sup> CITRON, Danielle Keats – BENJAMIN, Wittes: The Problem Isn’t Just Backpage: Revising Section 230 Immunity. *Georgetown Law Technology Review*, No. 453, 2018. 453–473.
- <sup>20</sup> *Force v. Facebook, Inc.*, 934 F.3d 53, 64 (2d Cir. 2019), cert. denied, 140 S. Ct. 2761 (2020); *Marshall’s Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019); *Enigma Software Grp. U.S.A v. Malwarebytes, Inc.*, 946 F.3d 1040, 938 F.3d 1026 (9th Cir. 2019).
- <sup>21</sup> SUZOR 2019. 73.; Cf.: “[...] at the extreme, they become the police, judge, jury and executioner.” McNAMEE, Joe: *The slide from self-regulation to corporate censorship*. Brussels, 2011. European Digital Rights, 4.
- <sup>22</sup> [https://rsrr.in/wp-content/uploads/2020/09/social-3064515\\_1920.jpg](https://rsrr.in/wp-content/uploads/2020/09/social-3064515_1920.jpg).
- <sup>23</sup> BARNARD, Catherine: *The Substantive Law of the EU: The Four Freedoms* (6th edition). Oxford, 2019. Oxford University Press.
- <sup>24</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. Signed on 13 December 2007. Official Journal C 326, 26/10/2012 p. 0001–0390.
- <sup>25</sup> KELLER, Perry: *European and International Media Law. Liberal Democracy, Trade, and the New Media*. Oxford, 2011. Oxford University Press, 115.
- <sup>26</sup> “Conditions affecting the structure of foreign broadcasting bodies cannot therefore be regarded as being objectively necessary in order to safeguard the general interest in maintaining a national radio and television system which secures pluralism.” *Stichting Collectieve Antennevoorziening Gouda and others v Commissariaat voor de Media*. CJEU, C-288/89, 1991, I-04007, [25.].
- <sup>27</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities. Official Journal L 298, 17/10/1989 p. 0023–0030.
- <sup>28</sup> KATSIREA, Irini: The Television Without Frontiers Directive. In DONDEERS, Karen – PAUWELS, Caroline – LOISEN, Jan (eds.): *The Palgrave Handbook of European Media Policy*, London 2014. Palgrave Macmillan, 297–311.
- <sup>29</sup> HEROLD, Anna: Country of origin principle in the EU market for audiovisual media services: consumer’s friend or foe? *Journal of Consumer Policy*, No. 1, 2008. 5–24.; POLYÁK, Gábor – SZÓKE, Gergely László: The country-of-origin principle and competition among national regulatory regimes in East Central Europe. *Central European Journal of Communication*, No. 1, 2009. 83–97.
- <sup>30</sup> DRIBBER, Berend Jan: The revised television without frontiers directive: is it fit for the next century? *Common Market Law Review*, No. 1, 1999, 87.
- <sup>31</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Text with EEA relevance). OJ L 95, 15. 4. 2010. 1–24.
- <sup>32</sup> KELLER, Perry: The New Television without Frontiers Directive. In BARENDT, Eric M. (ed.): *Yearbook of Media and Entertainment Law. Volume III: 1997/98*. 1998. Clarendon Press, 188.
- <sup>33</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”). OJ L 178, 17. 7. 2000. 1–16.
- <sup>34</sup> ECD (17).
- <sup>35</sup> Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations. OJ L 204, 21/07/1998. 0037–0048; Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access. OJ L 320, 28. 11. 1998. 54–57.
- <sup>36</sup> ECD (18).
- <sup>37</sup> Ibid.
- <sup>38</sup> Ibid.
- <sup>39</sup> KELLER 2011. 125.
- <sup>40</sup> WENDEHORST, Christiane: Platform Intermediary Services and Duties under the E-Commerce Directive and the Consumer Rights Directive. *Journal of European Consumer and Market Law*, No. 1, 2016. 30–33.
- <sup>41</sup> ECD, Section 4, Article 12.
- <sup>42</sup> ECD, Section 4, Article 13.
- <sup>43</sup> ECD, Section 4, Article 14.
- <sup>44</sup> The procedure already appears in the US Digital Millennium Copyright Act of 1998, but only applies to copyright infringement. For a comparison, see PEGUERA, Miquel: The DMCA Safe Harbors and

Their European Counterparts: A Comparative Analysis of Some Common Problems. *Columbia Journal of Law & the Arts*, No. 4, 2009. 481–512.

<sup>45</sup> DEFREYNE, Elise – JACQUEMIN, Hervé – LEDGER, Michèle – MICHEL, Alejandra: *Online Platforms' Moderation of Illegal Content Online. Law, Practices and Options for Reform*. Study for the committee on Internal Market and Consumer Protection, Policy Department

for Economic, Scientific and Quality of Life Policies, Luxembourg, 2020. European Parliament, 10.

<sup>46</sup> MADIEGA, Tambiama: Reform of the EU liability regime for online intermediaries. Background on the forthcoming Digital Services Act. *European Parliamentary Research Service*, May 2020. [www.europarl.europa.eu/RegData/etudes/IDAN/2020/649404/EPRS\\_IDA\(2020\)649404\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2020/649404/EPRS_IDA(2020)649404_EN.pdf), 1–2.



Képes, György

## A Brief History of the Danish Royal Titles

In the Hungarian constitutional history, one of the groups of royal prerogatives is called “honorary rights” (or “personal prerogatives of the king”, based on the corresponding Latin expression *jura majestatica stricte personalia*). The royal titles are discussed within this category. In the Hungarian history, such titles were mainly connected to the so-called “co-reigns” and “claimed lands” of the Holy Crown, covering the neighbour countries of the historical Hungarian kingdom.<sup>1</sup> The history of the style of the Danish kings provides us with a similar picture, however, that extent of cumulation of the titles as we could see at the example of the Hungarian monarchs throughout the centuries, was not characteristic of Denmark, not even in the periods when the Danish monarchy was a middle-power state in the Northern and Baltic regions.

### 1. King of the Danes

According to our contemporary documentary sources of the period of the Árpád dynasty, the Hungarian kings were not used to be called “kings of Hungary” until the end of the 11<sup>th</sup> century. They rather used the title “king of the Hungarians” (usually in the forms of *Ungrorum rex* or *Hungarorum rex*).<sup>2</sup> The expression *rex Hungariae*, already referring to the territorial extent of royal power, appeared the first time at the time of rex Coloman the Learned (*Könyves Kálmán*, r. 1095–1116).<sup>3</sup> In the middle ages, the royal titles of the Danish kings also referred to the population as the king’s subordinates instead of the territory of the country he was the ruler of, for they were usually named as “king of the Danes” and not “king of Denmark”.

The *Annales Regni Francorum* already called the (alleged) 8–9<sup>th</sup> century Danish kings, Sigfred and Godfred, as *reges [rex] Danorum*,<sup>4</sup> and the same wording was used by Canute the Great (*Knud den Store*, r. 1019–1035),

son of Sweyn Forkbeard (*Svend Tveskæg*, r. 987–1014), too.<sup>5</sup> In contrast with the Hungarian custom, this was not replaced with the territorial variant “king of Denmark” until the late middle ages, the establishment of the Danish–Norwegian personal union (1380) and Kalmar (Danish–Norwegian–Swedish) Union (1397). Since this period the title *rex Daciae* (the traditionally used spelling of *rex Daniae*) has been in use.

However, in the 12<sup>th</sup> century, in parallel with the recognition of the spiritual (sacral) legitimation of the royal power,<sup>6</sup> the expression “by the grace of God” appeared in the style of the Danish monarchs as well. Similarly to the Hungarian royal title,<sup>7</sup> the first Latin expression used for such purpose was *Divina favente clementia* also in Denmark, at the period of reign of Erik II the Memorable (*Erik Emune*, r. 1134–1137), but this already changed to *Dei gratia* (in Danish: *af Guds Nåde*) in the second part of the 12<sup>th</sup> century, at the time of Valdemar I the Great (*Valdemar den Store*, r. 1157–1182). Thus, at this time the full style of the Danish kings was “by the grace of God king of the Danes”. As a characteristic example, we may refer to the charter of the Vitskøl Abbey founded by Valdemar I, that began with the words “*ego Waldemarum, dei gratia Danorum rex*”.<sup>8</sup>

### 2. King of the Wends and the Goths

After the conquest of Mecklenburg in 1185 (according to the researches of Roland Steinacher, at some time between 1187 and 1193),<sup>9</sup> the style was supplemented with the title “king of the Slavs” (in the form “king of the Danes and the Slavs”, in Latin: *Danorum Sclavorumque rex*) and this remained in use for almost eight consequent centuries, until 1972.<sup>10</sup> A good example of the use of this title is, among others, the famous charter of 29 July 1282 (“the Danish Magna Carta”) issued by Eric V Klipping (r. 1259–1286), referred to as “*Ericus dei gracia danorum slauorumque rex*”.<sup>11</sup> The habitual Danish translation of the expression *rex Sclavorum* is *Venders konge* (“king of the Wends”), of course not referring to the historic denomination used for Hungarian Slovenes (“*vendek*”), but deriving from the common medieval German name of Slavic people “Wends” (*Wenedi, Wenden*).<sup>12</sup>

In 1361 a further royal title appeared besides the name of the Danish kings. This was “king of the Goths” (in Latin: *Gothorum rex*) that had already been part of the

style of the Swedish monarchs for a long time, and was adopted by Valdemar IV Atterdag (r. 1340–1375) at the time when he not simply reconquered Scania (*Skåne*) together with Blekinge and the southern part of the province of Halland from the Swedes, but also managed to occupy the island of Gotland.<sup>14</sup> This title, together with “king of the Wends” (altogether used in the form “king of the Wends and the Goths”, in Latin: *Sclavorum Gothorumque rex*) was kept in the style of the Danish kings until 1972, nevertheless Denmark had to give Gotland back to the Kingdom of Sweden already in the middle of the 17<sup>th</sup> century (by virtue of the Peace of Brömsebro of 1645).<sup>15</sup>

### 3. The first territorial titles: Duke of Jutland and Duke of Estonia

The first Danish royal title that actually referred to the territorial scope of the king’s power was not *rex Daciae* (as we mentioned earlier and we shall see soon in more details, this was not used until the end of the 14<sup>th</sup> century), but *dux Juciae* (literally “duke of Jutland”, in fact duke of Schleswig). The Danish kings were using this title in the periods when the positions of the king of Denmark and the duke of Schleswig were united in one hand, such as for example at the coronation of Valdemar II the Victorious (*Valdemar Sejr*, r. 1202–1241) in Christmas 1202, or at the coronation of king Abel (r. 1250–1252) on 1 November 1250.<sup>16</sup>

A similar title was “duke of Estonia” (in Latin: *dux Estoniae*) that appeared from time to time in the 13<sup>th</sup> and early 14<sup>th</sup> centuries, from the Danish victory in the Livonian Crusade against the Estonians (Battle of Lyndanisse, 1219) until August 1346 when Valdemar IV Atterdag sold the Estonian possessions to the Teutonic Order for 19,000 silver marks, in the framework of financial consolidation of the Danish treasury.<sup>17</sup> It is worth to be mentioned that the king’s epithet *Atterdag* (literally: “Return of the Day”) recalls the fact that Valdemar IV actually re-established the Danish state after an eight-year *interregnum* (1332–1340), a kind of feudal anarchy, while the counts of Holstein exercised sovereignty over Denmark as its main creditors, and possessors of major part of the old royal lands.

### 4. Style of the Danish kings at the time of the Danish–Norwegian personal union (1380–1814) and the Kalmar Union (1397–1523)

On 12 September 1380, by the death of Haakon VI (r. in Norway: 1343–1380), his underage son Olaf II (king of Denmark already from 1375, elected by the Danish Council of the Realm to the throne as Valdemar IV’s grandson) became the king of Norway as well, based on the fact that Norway had been a hereditary kingdom since the beginning of the history of the Norwegian monarchy. By the accession to the throne of Olaf II (r. in Denmark: 1375–1387, in Norway: 1380–1387), his style was supplemented with the title “king of Norway” (*rex Norwegiae*). This was the change that resulted the transformation of the Danish royal title from *Danorum rex* to *Daciae rex*, making thus the first reference to the territorial characteristic of the king’s power.

Consequently, Olaf II’s full title was “king of Denmark and Norway, the Wends and the Goths” (in Latin: *Daciae Norwegiae Sclavorum Gothorumque rex*, in Danish: *Konge til Danmark og Norge, de Venders og Gothers*). The difference between this usage and the earlier custom can be well seen in the coronation charter of the underage king issued in 1376 and signed by both of his parents, Margrete Valdemarsdatter and Haakon VI of Norway, who was then king of Sweden too. At the end of the text of the charter Olaf was officially indicated still as “king of the Danes, Wends and the Goths” (*Danorum, Sclavorum, Gothorumque rex*), but his father Haakon was mentioned as “king of Sweden and Norway” (*rex Sveciae et Norwegiae*), and as a reference to the earlier mentioned Olaf, the expression *rex Daciae* (“*cum dicto domino Olauo rege Daciae*”) was used the second time in his relation as well.<sup>18</sup>

Olaf’s successor, Erik VII of Pomerania (r. 1397–1439), who was elected as king of Sweden as well, and by this

the Kalmar Union of the three Scandinavian kingdoms was established for almost one and a half century, frequently used the special title *Konigen af thissæ thry righæ* (“king of these three kingdoms”).<sup>19</sup> “These kingdoms” were usually listed in the fully explicit royal title as *Daciae Sveciae Norwegiae...* (in Danish: *Danmarks Svergies Norges...*),



Eric V Klipping<sup>13</sup>

i.e. Denmark, Sweden and Norway were following each other in this order. Furthermore, Erik was entitled to bear the title of duke of Pomerania (in Latin “*dux Pomeraniae*”, in Danish: “*Hertug i Pommern*”) as well.

The latter was of course not part of the style of the next union king, Christopher III of Bavaria (r. in Denmark: 1440–1448, in Sweden since 1441, in Norway since 1442), however he was entitled to use two other additional titles on his own right, “count palatine of the Rhine” and “duke of Bavaria” (in Latin: *comes palatini Reni et dux Bavariae*).<sup>20</sup> It is interesting to mention that Christopher was granted at his coronation ceremony held in 1 January 1443 in the Cathedral of Ribe with the title *archirex Daniae*.<sup>21</sup> The Greek prefix *archi-* referred to the fact that Denmark had an especially important position among the three Nordic kingdoms forming the Kalmar Union, similarly to the place of late medieval Hungary among the “lands of St. Stephen’s Holy Crown”, that was also often referred to as *archiegnum* (“main realm”) and the Hungarian king as *archirex*.<sup>22</sup>

## 5. The Legacy of the Oldenburgs<sup>23</sup>

The appearance of the House of Oldenburg on the Danish throne in the 15<sup>th</sup> century resulted in further changes in the style of the kings of Denmark. The first Oldenburg king, Christian I (r. 1448–1481)<sup>24</sup> brought his home titles with himself to Denmark. As he had already been the count of Oldenburg and Delmenhorst, these titles were incorporated in the Danish royal titles in the form “*comes de Oldenborch et Delmenhorst*” (in Danish: *Greve i Oldenborg og Delmenhorst*). In 1460, when his uncle count Adolphus died, he inherited the duchy of Schleswig (an originally Danish province in Southern Jutland, possessed by the counts of Holstein since the 14<sup>th</sup> century) together with the county of Holstein. At this occasion, the estates of Schleswig and Holstein forced him to sign the Treaty of Ribe in which he had to promise that these two territories would be governed “forever undivided” (“*ewich tosamende ungedelt*”, in later sources: “*up ewig ungedelt*”).<sup>25</sup> From this time on, Christian I and his successors were entitled to use the titles “duke of Schleswig” (not in the old Latin form “*dux Juciae*” any more, but as “*dux Slesvicensis*”)<sup>26</sup> and “count of Holstein” (in Latin: *comes Holsatiae*).

After 1474 – when Holstein was elevated by the Holy Roman Emperor to the rank of duchy, and thus Christian as the duke of Holstein was recognized as his direct vassal<sup>27</sup> – the Oldenburg titles were transformed to the quite complex form “Duke of Schleswig and Holstein, Stormarn and Dithmarschen, Count of Oldenburg and Delmenhorst”). For an example we may refer to the treaty of peace and alliance between the Kingdoms of France and Denmark concluded on 8 July 1498 (still effective today!),<sup>28</sup> in which king John (r. 1481–1513) was named with his full style “*Joannes, Dei gratia, Daciae, Sueciae, Norvegiae, Slavorum Gothorumque Rex, Dux Slesvicensis ac Holsatiae, Stormariae et Dithmarsiae, Comes in Oldenburg et Delmenhorst*”.<sup>29</sup>

Interestingly, an indirect reference to the German provinces of Holstein, Stormarn and Dithmarschen could already be found among the titles of Valdemar II as well, in the ancient form of “Lord of Nordalbingia” (in Latin: *dominus Nordalbingiae*). However, this title had no connection with those of the Oldenburgs at all: King Valdemar the Victorious was recognized as the ruler of these old Saxon territories at the frontiers of the historical Kingdom of Denmark – also mentioned in Adam of Bremen’s famous ecclesiastical chronicle *Gesta Hammaburgensis Ecclesiae Pontificum* written in the 11<sup>th</sup> century<sup>30</sup> – after his successful military campaign in Holstein in 1201, and the conquest of the cities of Hamburg and Lübeck in 1202.<sup>31</sup>

Similarly to the title “king of the Goths”, the German count and ducal titles brought to Denmark by the Oldenburgs remained in the style of the Danish kings until as late as 1972, in spite of the fact that, by virtue of the Vienna peace treaty of 30 October 1864 closing the quick second Schleswig war in a devastating way from Danish point of view,<sup>32</sup> Denmark not just had to hand over the provinces of Holstein and Lauenburg to Prussia and Austria (in fact only to Prussia), but also the whole territory of Schleswig, including the area between the rivers Kongeå and Eider, i.e. those parts (traditionally called *Sønderjylland*, Southern Jutland) as well that had already been recognized as belonging to the realm of the Danes by Charlemagne in a peace with the envoys of the Danes concluded in 811.<sup>33</sup>

## 6. Conclusion

From the fact that both the title “king of the Goths” and those inherited in the 15<sup>th</sup> century from the Oldenburgs (as the German counts of Holstein and the connected territories) remained in use right until the second part of the 20<sup>th</sup> century, we can draw the conclusion that, at least after the Brömsebro (1645) and Roskilde (1658) peace treaties with Sweden, and the Peace of Vienna (1864) with Prussia and Austria, the style of the Danish kings not just contained fictive titles (like “Wends”), but, at least from a strict international law point of view, an unlawful usage of monarchic titles can also be observed. In the history of the Hungarian constitutional law, such “unlawful” titles are usually referred to as “*igénycímek*” (“titles of claim”).<sup>34</sup>

Did it really cause an actual legal problem in the modern age? No, not at all. Let us just mention an early 20<sup>th</sup> century example from the Hungarian history for illustrating this matter. When the last Hungarian king, Charles IV (r. 1916–1918) was crowned on 30 December 1916 in Budapest, he was named, among others – and further to some incontestably existing titles like “king of Hungary” or “Croatia” –, as the “king of Serbia”, “Cumania” (land of the Cumans in the 13<sup>th</sup> century on the territory of the later Romanian principalities) and “Bulgaria” as well. In the Treaty of Berlin of 13 July 1878, the Kingdom of Hungary (more precisely: the Austro-Hungarian Monarchy) confirmed to recognize the existence of these countries,

moreover, Hungary and Bulgaria were allies in World War I, and Tsar Ferdinand of Bulgaria personally attended the above mentioned coronation ceremony as the only foreign monarch,<sup>35</sup> being one of the closest friends of the royal family, and not being disturbed by the fact that his friend Charles was just crowned as the “king of Bulgaria”.

Anyway, it was more than a wise decision from Margaret II of Denmark, when she has finally dropped all the politically disputable (“incorrect”) historical titles from her style in 1972, deciding to let herself be called in the future simply as “by the grace of God Queen of Denmark” (*af Guds Nåde Danmarks Dronning*).

## Notes and references

- For a concise history of the Hungarian royal titles, see KÉPES, György: IV. Károly magyar királyi címei, történeti áttekintésben [Royal titles of Charles IV in a historical perspective]. In GLÄSSER, Norbert – MÓD, László – VARGA, Norbert – ZIMA, András (eds.): „*Fogadd a koronát...*” Ünnepe és válság, hagyományok és reformkonceptciók [“Accept the Crown...” Celebration and crisis, traditions and reform concepts]. Szeged, 2001. SZTE Néprajzi és Kulturális Antropológiai Tanszék. 19–39. See also KISTELEKI, Károly: „Archiregnum Hungariae”: Mítosz vagy valóság? Megjegyzések a középkori Magyar Királyság területi és népességi aspektusairól [“Archiregnum Hungariae”: A myth or reality? Some remarks on the territorial and population aspects of the medieval Kingdom of Hungary]. In RÉVÉSZ, T. Mihály – MÁTHÉ, Gábor (eds.): Állam-, egyház-, jogtörténeti magyarázatok. Ünnepi tanulmányok Rácz Lajos tiszteletére, 65. születésnapja alkalmából [Explanations of state, church and legal history. Festive studies in honour of Lajos Rácz for his 65<sup>th</sup> birthday]. Budapest, 2013. Multiszolg Bt. 71–72.; PÁLFFY, Géza: A magyar korona országainak koronázási zászlói a 16–17. században [Coronation flags of the countries of the Hungarian Crown in the 16–17<sup>th</sup> centuries]. In BUBRÁK, Orsolya (ed.): „*Ez világ, mint egy kert...*” Tanulmányok Galavics Géza tiszteletére [“This world as a garden...” Studies in honour of Géza Galavics]. Budapest, 2010. MTA Művészettörténeti Intézet–Gondolat Kiadó, 19., 39.; RÁ CZ, Lajos: Alkotmánytörténeti jellemzők [Characteristics of constitutional history]. In NAGY Endre – RÁ CZ Lajos: *Magyar alkotmány- és közigazgatás-történet [A history of the Hungarian constitution and public administration]*. Budapest, 2007. HVG-ORAC Kiadó, 23.
- In the charter of privilege of the Pannonhalma Abbey probably written in 1002 (but dated to 1001) the title *Ungrorum rex* can be read, while the charter of donation to the Veszprém Diocese and charter of privilege of the Pécs Diocese (both dated to 1009 but only available in 13–14<sup>th</sup> century transcripts) contain the expression *Hungarorum rex*. See GYÖRFFY, György (ed.): *Diplomata Hungariae Antiquissima, accedunt epistolae et acta ad historiam Hungariae pertinentia*. Tomus I. (DHA I.) Budapest, 1992. Magyar Tudományos Akadémia, 39., 52., 58.
- POMOGYI, László: *Magyar alkotmány- és jogtörténeti kézikönyv [Dictionary of Hungarian constitutional and legal history]*. Budapest, 2008. Mérték Kiadó, 570–571. Károly Kisteleki draws the attention to the fact that this title was already used in the survey of Tihany that had been compiled in 1092, i.e. in the era of St. Ladislaus I (r. 1077–1095). See KISTELEKI 2013. 72.; source referred by the author: DHA I., 282.
- PERTZ, Georg Heinrich (ed.): *Monumenta Germaniae Historica. Scriptores rerum Germanicarum in usum scholarum 6. Annales Regni Francorum*. Hannover, 1895. Hahn (MGH SS rer. Germ. 6.), 49., 61. 103., 118.
- BOLTON, Timothy: *The Empire of Cnut the Great. Conquest and the Consolidation of Power in Northern Europe in the Early Eleventh Century*. The Northern World 40. Leiden–Boston, 2009. Brill. 155.
- HOFFMANN, Erich: The Unity of the Kingdom and the Provinces in Denmark during the Middle Ages. In SKYUM-NIELSEN, Niels – LUND, Niels (eds.): *Danish Medieval History. New Currents*. Viborg, 1981. Museum Tusulanum Press, 98.
- See e.g. FERDINANDY, Gejza: *A királyi méltóság és hatalom Magyarországon. Közjogi tanulmány [The royal dignity and power in Hungary. A public law study]*. Budapest, 1896. Kilián Frigyes, 236.
- GERTZ, Martin Clarentius (ed.): *Scriptores Minores Historiae Danicae Medii Aevi*. Vol. 2. København, 1918–20. G. E. C. Gad. 144.
- STEINACHER, Roland: Wenden, Slawen, Vandalen. Eine Frühmittelalterliche pseudologische Gleichsetzung und ihre Nachwirkungen. In POHL, Walter (ed.): *Die Suche nach den Ursprüngen. Von der Bedeutung des frühen Mittelalters*. Wien, 2004. Verlag der Österreichischen Akademie der Wissenschaften, 343. For the cited documentary sources see CHRISTENSEN, Carl A. – NIELSEN, Herluf – WEIBULL, Lauritz (eds.): *Diplomatarium Danicum. 1. række / 3. bind. Diplomer 1170–1199 & Epistolae abbatis Willelmi de Paraclito*. København, 1976–1977. Munksgaard Reitzels. Documents No. 143. and 179.
- GELTING, Michael H.: The Kingdom of Denmark. In BEREND, Nora (ed.): *Christianization and the Rise of Christian Monarchy*. Cambridge, 2007. Cambridge University Press, 89.; HYBEL, Nils: *Danmark i Europa, 750–1300*. København, 2003. Museum Tusulanum Press, 216.; OLESEN, Jens E.: A Danish Medieval “Empire” in the Baltic (1168–1227)? In IMSEN, Steinar (ed.): *The Norwegian Domination and the Norse World, c.1100 – c.1400*. Trondheim, 2010. Tapir Academic Press, 274.
- NIELSEN, Oluf (ed.): *Samling af Adkomster, Indtægtsangivelser og Kirkelige Vedtægter for Ribe Domkapittel og Bispestol, Nedskrevet 1290–1518, kaldet “Oldemoder” (avia Ripensis)*. København, 1869. Thiele Bogtrykkeri, 25.
- For more details on this topic see STEINACHER 2004. 329–330.
- [https://upload.wikimedia.org/wikipedia/commons/8/85/Erik\\_Glipping.jpg](https://upload.wikimedia.org/wikipedia/commons/8/85/Erik_Glipping.jpg).
- JØRGENSEN, Frank – WESTRUP, Morten: *Dansk centraladministration i tiden indtil 1848*. Viborg, 1982. Dansk Historisk Fællesforening, 39.; NAGY, Gábor: *A középkori Svéd Királyság története [A history of the medieval Kingdom of Sweden]*. Miskolc, 2012. Miskolci Egyetemi Kiadó, 16., 58.
- JØRGENSEN–WESTRUP 1982. 39.
- HYBEL 2003. 216–217.; KJÆR, Lars: Feasting with Traitors. Royal Banquets as Rituals and Texts in High Medieval Scandinavia. In JEZERSKI, Wojtek – HERMANSON, Lars – ORNING, Hans Jacob – SMÅBERG, Thomas (eds.): *Rituals, Performatives, and Political Order in Northern Europe, c. 650–1350*. Turnhout, 2015. Brepols Publishers, 285–286.
- FINDEISEN, Jörg-Peter: *Dänemark. Von den Anfängen bis zur Gegenwart*. Regensburg, 1999. Verlag Friedrich Pustet, 75.
- See NIELSEN, Herluf (ed.): *Diplomatarium Danicum*. Series 4., Vol. 1. (1376–1379). København, 1984. Danske Sprog- og Litteraturselskab, document No. 40, 56–57. For more examples of the usage of the new form *rex Daciae* in medieval documents see MUREȘAN, Dan Ioan: *Rex Dacie / Regina Dacie. Contribuții la studiul ideologiei monarhice daneze la finele Evului Mediu*. In MOTOGNA, Macarie – HASAN, Mihai Florin – VIZAUER, Victor (eds.): *Cel care a trecut făcând bine: Nicolae Edroiu*. Cluj Napoca, 2019. Editura Școala Ardeleană, 81–87.
- AUGE, Oliver: Ein Integrationsmodell des Nordens? Das Beispiel der Kalmarer Union. In MALECZEK, Werner (ed.): *Fragen der politischen Integration in mittelalterlichen Europa. Vorträge und Forschungen*, 63. Ostfildern, 2005. Thorbecke, 520–521.; NAGY 2012. 173.; OLESEN, Jens E.: The Governmental System in the Union of Kalmar, 1389–1439. In RIIS, Thomas (ed.): *Studien zur Geschichte des Ostseeraumes* 1. Odense, 1995. Odense University, 50., 55–56.

- <sup>20</sup> OLESEN, Jens E.: ‘Archiregem Regni Daniae’. *NOWELE. North-Western European Language Evolution*. No. 1, 1993. 211.; as an example see Idem (ed.): *Christoffer af Bayerns breve 1440–1448 verdørende hans bayerske stamhertugdømme. Die Briefe Christoffers von Bayern 1440–1448 über sein bayrisches Stammherzogtum*. København, 1986. Selskabet for Udgivelse af Kilder til Dansk Historie. Document No. 57.
- <sup>21</sup> MØLLER JENSEN, Janus: *Denmark and the Crusades, 1400–1650*. The Northern World 30. Leiden–Boston, 2007. Brill. 68.; OLESEN 1993. 205.
- <sup>22</sup> AUGÉ 2005. 523–525.; HOFFMANN, Erich: *Königerhebung und Thronfolgeordnung in Dänemark bis zum Ausgang des Mittelalters*. Berlin–New York, 1976. Walter de Gruyter, 161.; MUREŞAN 2019. 87.; OLESEN 1993. 211. About the Hungarian concept of Archiregnum in more details see KISTELEKI 2013.
- <sup>23</sup> “The Legacy of the Oldenburgs” is a paraphrase of the 1980’s German (ZDF) TV-series *Das Erbe der Guldenburgs*.
- <sup>24</sup> On the paternal line, Christian I was a descendant of Eric IV Ploughpenny (r. 1241–1250), while on the maternal line he was also descendant of kings Abel (r. 1250–1252) and Christopher I (r. 1252–1259) too, thus the first Oldenburg king was a late offspring of all three sons of King Valdemar II the Victorious.
- <sup>25</sup> The Treaty of Ribe of 5 March 1460 (often referred to as the *Freiheitsbrief*) can be read in German in TAMM, Ditlev – SCHUBERT, Werner – JØRGENSEN, Jens Ulf (eds.): *Quellen zur dänischen Rechts- und Verfassungsgeschichte (12.–20. Jahrhundert)*. Rechtshistorische Reihe 363. Frankfurt am Main, 2008. Peter Lang, 61–62. Document No. 12. About the historical and legal background and consequences of the clause “*up ewig ungedeelt*” in more details see: RIIS, Thomas: “Up ewig ungedeelt” – ein Schlagwort und sein Hintergrund. In STAMMKUHLMANN, Thomas – ELVERT, Jürgen – ASCHMANN, Birgit – HOHENSEE, Jens (eds.): *Geschichtsbilder. Festschrift für Michael Salewski zum 65. Geburtstag*. HMRG Beihefte 47. Stuttgart, 2003. Franz Steiner Verlag, 158–167.
- <sup>26</sup> PETERSEN, Henry: *Danske kongelige sigiller samt Sønderjyske her-tugers og andre til Danmark knyttende fyrsters sigiller, 1085–1559*. København, 1917. C. A. Reitzel. XVI.
- <sup>27</sup> JØRGENSEN–WESTRUP 1982. 40.; RIIS 2003. 161. footnote No. 23.
- <sup>28</sup> See [https://en.wikipedia.org/wiki/Foreign\\_relations\\_of\\_Denmark#Europe](https://en.wikipedia.org/wiki/Foreign_relations_of_Denmark#Europe).
- <sup>29</sup> Cited in MUREŞAN 2019. 136. Source of the document as indicated by Mureşan (footnote No. 286): LÉONARD, Frédéric (ed.): *Recueil des traités de paix, de trêve, de neutralité, de confédération, d’alliance, et de commerce, faits par les rois de France, avec tous les princes, et potentats de l’Europe, et autres, depuis près de trois siècles*. Vol. 1. Paris, 1693. [s.n.], 399–404.
- <sup>30</sup> In English ADAM OF BREMEN: *History of the Archbishops of Hamburg–Bremen*. Translated by TSCHAN, Francis J. New York, 2002. Columbia University Press, the description of Nordalbingia: 83.
- <sup>31</sup> HYBEL 2003. 216–217.
- <sup>32</sup> Just for some examples how this episode of Danish history is seen by Danish historiography, let us quote Knud J. V. Jespersen who repeatedly calls in his book [JESPERSEN, Knud J. V.: *A History of Denmark*. London, 2019. MacMillan International–Red Globe Press] the peace of Vienna of October 1864 a “national catastrophe” for Denmark (7., 71.) or simply “catastrophe” (33., 76., 202., 203.); the loss of the duchies of Schleswig and Holstein to Germany “the definitive national trauma” (31.); the result of the second Schleswig war “humiliating” (32., 77., 122., 212.), “catastrophic” (200.), “crushing” (205.) or “traumatic defeat” (217.). However, Jespersen is exaggerating just in order to emphasize the way how the modern Danish national identity has been, almost paradoxically, formed from such a historical trauma. Modern Denmark is a small country that has a greatness that is much more important than its size: it is able to provide the general welfare of its citizens at the highest imaginable level (220–226.).
- <sup>33</sup> BOHN, Robert: *Dänische Geschichte*. München, 2001. C. H. Beck. 7.; SKOVGAARD–PETERSEN, Inge: The making of the Danish kingdom. In HELLE, Knut (ed.): *The Cambridge History of Scandinavia. Volume 1: Prehistory to 1520*. Cambridge, 2003. Cambridge University Press, 173.
- <sup>34</sup> KMETY, Károly: *Magyar közjog [Hungarian public law]*. Budapest, 1926. Grill Károly, 184–185.
- <sup>35</sup> MACZÓ, Ferenc: IV. Károly király és Zita királyné koronázása [Coronation of King Charles IV and Queen Zita]. *Rubicon*, No. 1–2, 2017. 96.



Koncz, Ibolya Katalin

## A Special Field of Hungarian Private Law, i.e., the Legal Historical Aspects of Alimony in the Post-Compromise Era of Hungary

Special rights of women<sup>1</sup> have been essential parts of the legal norms regulating the social relationships among people. They can be especially found among the rules regulating the establishment of marriages as well as the inheritance rights upon the termina-

tion of marriage. Regarding such special rights – especially maintained for women – it can be concluded that the basis for their establishment is the social perception that judged the legal statuses of men and women in a different way until the beginning of the 20<sup>th</sup> century. Out of the special rights of women, this study aims to discuss the issue of alimony, based on the respective special literature sources of the given times as well as the practices of the Hungarian Royal Curia. This study may be continued in the future by assessing the subject based on archive research.

### 1. The appearance of alimony obligation in marriages

Naturally, the issue of alimony has been part of human practices ever since the communities of people accepted the partnership of men and women and the term of ‘family’. As Lajos Staud said,



*“By entering in a marriage, the man establishes a family. The condition for achieving the respective individual, social, administrative, ethical, and financial goals is the complete life community of the spouses. The respective consequences are preserving marital fidelity and the physical and ethical aspects of sexual purity, as well as settling any debts in marriage, living together, and taking care of each other, all in the spirit of mutual-ity and reciprocity.”<sup>2</sup>*

This definition outlined the obligation of married spouses, although it did not define such obligations in particular details. Bálint Kolosváry mentioned alimony for the wife as a husband’s obligation when he defined that

*“the development in legal history placed the husband at the leading position of the family, and the rights of the husband go together with his obligations imposed on him regarding providing for his family. The explanation of the obligation of alimony [...] should be sought in the life community of marriage as well as in the traditional structure of marriage, according to which the woman was ordained to stay in the household, therefore she is essentially unable to perform alimony obligations.”<sup>3</sup>*

It can be seen that the liability of alimony was derived from the life community of marriage. Contrary to this approach, Ferenc Raffay defined alimony not as a consequence of marriage but as an issue based on the roles formed in the family, which were established as a result of marriage. Consequently, according to Raffay, alimony’s “legal basis is the position of a woman within the family, based on which she usually cannot work in a job to earn wages, but she keeps the household, and therefore her husband is obligated to provide for her”.<sup>4</sup> In this case, we can find further justification, according to which the highlight is on the different tasks undertaken by the spouses within family life operations, i.e. it emphasizes the fact that women cannot earn wages in jobs, being responsible for housekeeping, which provides the basis for the entitlement for alimony. Furthermore, Károly Szladits also traces back the legal basis for alimony to the different undertakings of spouses, when he stated that “the husband, as the head of the family, shall undertake the burdens related to marriage. Accordingly, the husband must ensure sufficient provision for the wife.”<sup>5</sup>

According to Kornél Sztéhlo, alimony has two legal bases; on one hand, it is an obligation that can be derived from the definition of marriage,<sup>6</sup> and, on the other hand, it is a fact that alimony “is a consequence of the powerlessness and economical subordination of women”. Then he stated that “the man who swears upon the conclusion of marriage that he shall not leave the woman under any circumstances, thus undertakes not only ethical, but also legal obligations, according to which he will be obligated to support his wife’s finances until death.”<sup>7</sup>

According to the standpoint of Gyula Virág, primary law should be applied, as it was already stated in such

law that “the husband’s obligation to care for his wife”, i.e., providing everything for the wife that is affordable according to the social standing of the husband, is an obligation.<sup>8</sup>

Further to the opinions of practising lawyers and legal scholars, we can find standpoints related to this subject in judicial court practices as well. In its Order made in 1908, the Oradea [Nagyvárad] Royal Court defined alimony in a similar way.

*“The security for marriage in terms of the respective interests lies in the internally peaceful community of the spouses based on morals, a necessary consequence of which is that the establishment and maintenance of such community must be supported by both spouses in an unselfish and honest manner. However, the commonly larger extent of entitlements of the husband as family breadwinner also entails the husband’s obligation to protect the interests of the woman, and consequently, the husband should not only provide for the sufficient means of living and supply of the wife but also ensure a peaceful home for her and protect her from any unlawful moral and physical assaults made by others.”<sup>9</sup>*

## 2. The elements of the institution of alimony

It can be stated from the above that the issue of supports, and more particularly, alimony and the elements thereof was a vivid concern for the legal scholars of the era. This raises the issue how the term support can be defined in the framework of private law. It is a term classified among laws of obligations, a criterion of which is that the support provider is obligated to provide for the financial means required for the life maintenance of the support receiver whether in kind or by monetary means. Such life maintenance costs include the expenditure for food, clothing, accommodation, medical and other costs for maintaining sufficient health, as well as the costs of educating the minor children.<sup>10</sup> “The basis for support is either the law or a transaction. The lawful obligation of support is based on matrimonial or family relationship or by the fact of procreation.”<sup>11</sup> The husband, as the head of the family, had the obligation to bear the marriage-related burdens. Such burdens included all the necessities of the spouses and their children, to the extent that their economic and social standing required so. That is why the husband is obligated to support the wife.<sup>12</sup> The Act on Marriage also determined the extent of support: “the woman not at fault shall be supported by the husband claimed to have been at fault, in line with his material status and social standing [...]”<sup>13</sup> Accordingly, regarding the extent of the liability of support, alimony was classified among the rank-based support types.<sup>14</sup> In terms of the practical interpretation of the legal scholars, it can be stated that neither Ferenc Raffay,<sup>15</sup> nor Kornél Sztéhlo<sup>16</sup>

emphasized the extent of alimony. On the other hand, Károly Szladits specifically stated “appropriate alimony”,<sup>17</sup> highlighting that “such support” shall be provided by the husband “in the mutual household, fitting his social standing, his wealth and earning capacities”.<sup>18</sup> Bálint Kolosváry also specified a similar extent of support obligation to be provided by the husband. “Regarding the extent of alimony, the guiding principle is that it should be a so-called »appropriate alimony«, which is suitable for the social and civil standing as well as the financial means of the husband and which is proportional to the household and lifestyle of the spouses”.<sup>19</sup> According to the viewpoint of Gyula Virág, “Regarding the means and extent of support, the husband shall be obligated to provide for his wife in an appropriate manner at all times.”<sup>20</sup>

The judicial court practices are well characterised by the decision of 1908 of the Oradea [Nagyvárad] Royal Court, according to which “[...] the husband shall be obligated to provide for the wife’s [...] sufficient support and alimony [...]”.<sup>21</sup>

### 3. Cases of entitlement for alimony

As a next step, we should examine when a wife was entitled to receive alimony. Alimony could be of three different types, depending on whether the spouses were within the bond of marriage or outside of it. The established types presumed a chronological sequence as well. Firstly – upon the conclusion of marriage – a woman was entitled to alimony in her husband’s household; the second type was when the spouses terminated their cohabitation; such cases are called temporary alimony, and in the case of the third type, the woman was only entitled alimony upon the existence of other conditions, after the termination of marriage by means of an effective court order, or divorce from bed and board.<sup>23</sup>

#### 3. 1. Alimony issues in cases of common household

During the term of the marriage, such alimony could usually only be claimed by a woman from her husband in kind, and within the common household.<sup>24</sup> Károly Szladits also specified it as a basic criterion in this case that



Vasili Vladimirovich Pukirev: *The Dowry*<sup>22</sup>

spouses should be in a common household.<sup>25</sup> Alajos Knorr also placed the emphasis on living in the same household: “while spouses live, they shall be obligated to abide together and they shall not arbitrarily terminate the life community between them”.<sup>26</sup> If the spouses lived together, this raised the question how the provision of alimony could be ensured. As Bálint Kolosváry put it, “Alimony during the term of living together in matrimonial community includes naturally provided accommodation, food and clothing, as well as the provision of intellectual necessities and the costs of medication.”<sup>27</sup> Károly Szladits also discussed the issue with similar wording.<sup>28</sup> This issue was also highlighted by Antal Almási as well, when he stated that “during the term of living together in matrimonial community, the husband is obligated to provide support for his wife in kind, proportionally to the wealth, earnings and social status of the husband”.<sup>29</sup> The decisions made by Hungarian High Courts also expressed the same views. “During the term of living in marriage, a woman is entitled for alimony in the form of in kind, in the household of the husband.”<sup>30</sup> As expressed more specifically by Ferenc Raffay: “which should be in concordance with the financial means and the social status of the husband. Alimony shall consist of accommodation, clothing, food, medicine, and potentially spa services as well as the fulfilment of intellectual needs.”<sup>31</sup> Kornél Sztéhlo determined the elements of alimony obligations realised in the course of the term of marriage:

*“The subject of such alimony obligation during living together in marriage is not a certain sum of money but providing for life in the common abode in kind and fulfilling all the needs of the wife. If spouses live together, and keep a common household, the wife has no entitlement to claim alimony at court. She can only make such claim in an indirect manner, by ordering the bills on goods bought for the household and for her necessities to be settled by the husband, who is universally liable to pay for such obligations originating from such credited amounts, provided that such amounts do not exceed the respective extent of necessities proportional to the spouses’ financial and social statuses.”<sup>32</sup>*

It should be particularly highlighted that a higher extent of responsibility of the husband appears regarding the financial coverage for the alimony and the household costs.

### 3. 2. Alimony upon the Termination of Life Community of Spouses – Temporary Alimony

The rules on alimony changed in case the marriage still existed between the spouses, but the married couple broke the bond of life community, i.e., their living together. In such cases, temporary alimony was to be granted. According to Antal Almási, the basic condition for temporary alimony was that the parties still had to have a matrimonial relationship, therefore, regardless the issue of faultiness, the woman was surely eligible for

being granted the alimony.<sup>33</sup> On the other hand, according to the viewpoint of Károly Szladits, a lawful and enforceable alimony claim of a wife during marriage could only be placed upon rightful separation.<sup>34</sup> Women terminating the actual activity of living together for a rightful reason as well as women not providing any reason for interrupting the spouses’ life community were entitled to receive temporary alimony.<sup>35</sup> In such cases, Bálint Kolosváry – accepting the viewpoint of Károly Szladits – also stated that the formerly specified alimony transformed into temporary alimony, which was divided into two subcategories.<sup>36</sup> According to his theory, the basis for differentiating such alimonies is whether or not the spouses have initiated separation or divorce proceedings at a judicial court. If the spouses chose separation, however, they had not yet initiated any proceeding regarding the divorce, the alimony liability of the husband was specified as a voluntary temporary alimony. On the other hand, if the parties initiated a divorce proceeding, the liability of alimony was ordered by court.<sup>37</sup>

Although Bálint Kolosváry defined the former case as voluntary temporary alimony, a woman was also entitled to make an alimony claim from the husband at court in such cases according to the respective legislations.<sup>38</sup> Alimony was deemed rightful in case the cohabitation of the spouses was abruptly by the husband, or he provided fundamental grounds for the termination of cohabitation, or the wife may have given her consent for such termination. In such cases, however, the husband was unavoidably liable to pay alimony, and the extent of such support was not related to the financial means of the woman, similarly to the support provided during the term of marriage.<sup>39</sup> Furthermore, according to the standpoint of Károly Szladits,

*“if the husband ousts the wife, if he breaks the marriage relationship upon his own faultiness or provides sufficient grounds for the wife to terminate the marriage, in such cases, the woman living separately – rightfully, i.e., without her being at fault at all – may claim the payment of alimony from the husband for the period of the separation. Usually, such alimony should be paid in cash, in monthly instalments at the beginning of each month in advance. In such cases, the mere obligation of a spouse alimony will turn into a real, legally enforceable liability.”<sup>40</sup>*

It is firmly stated that the woman had to be faultless in the circumstance that occurred.

According to Gyula Virág, there was also a possibility for “the husband and the wife to agree upon living separately from each other, and that the husband would obligate himself to be liable for paying alimony for his wife and they would conclude a respective contract on the subject.”<sup>41</sup> In such cases, a private law contract provided the basis for the temporary alimony payment liability. As the Curia specified in a decision in principle, “[...] the circumstance that the separation of spouses is the consequence of a mutual agreement shall not exempt

the husband from paying alimony to his wife who lives separately from him.”<sup>42</sup>

The second type of temporary alimony was when the spouses terminated matrimonial cohabitation and they initiated a divorce procedure at a court. In such cases, the wife had to expressly request the ordering of the payment of a temporary alimony in her claim or counterclaim. A significant aspect of this issue was that the court could only make a decision on the temporary support of the given wife if the wife specifically requested it; otherwise, the court could not make a respective order, being confined to the original subject matter of the case.<sup>43</sup> Based on the rules of the Act on Marriage, spouses were only entitled to get separated in the course of the divorce proceeding in case the grounds for the filing for divorce had been the wife’s life or health being at risk and in danger,<sup>44</sup> and if the divorce requesting party has already requested the ordering of separation in its submitted claim.<sup>45</sup> One can also find cases where married life community was abruptly by the wife, yet the court still found the husband to be at fault in the course of the divorce proceeding and actually ordered temporary alimony to be provided for the wife.<sup>46</sup> It should be noted that according to § 90 of the Act on Marriage, a court order on providing alimony regarding the husband’s obligation to care for the wife had three provision. The first one was that the wife could not be at fault in the situation occurred. The second one is that the court would find the husband at fault, and the third one is that the financial status of the wife should not be sufficient for supporting herself satisfactorily.<sup>47</sup> Accordingly, if any of the mentioned conditions did not exist, the wife was not entitled to receive alimony and the husband was not liable to pay alimony, either.

### 3. 3. Alimony upon the Termination of Marriage – Permanent alimony

The brief introduction of the institution of permanent alimony is the subject of the third large section of the study. The right for permanent alimony was a right originating from the bonds of marriage, the effect of which could be witnessed at the time of the divorce, as it could become validated upon the termination of marriage by means of divorce.<sup>48</sup> According to the standpoint of Alajos Knorr, “The termination of marriage means the complete cessation of matrimonial life community, as in such a case the bond of marriage is dissolved.”<sup>49</sup> Kornél Sztéhlo pointed out that “the commencement of a divorce proceeding only affects a woman’s alimony that without it, and prior to the declaration of the divorce regarding the marriage, no permanent alimony can be ordered to be granted.”<sup>50</sup> Examining the respective provisions of the Act on Marriage, it can be concluded that regarding the grounds for the termination of marriage, legislators took into account the faultiness of the spouses; accordingly, issues without faultiness as well as unavoidable and incurable illnesses – such as mental illnesses or incapaci-

ties – were completely left out. Furthermore, legislators did not provide regulations on the unilateral or mutual nature of the spouses’ willingness to terminate the marriage, in such terms as mutual agreement or implacable hatred. This meant that according to the Hungarian legislation – unlike the respective German norm – marriage could only be terminated upon the grounds of faultiness. The principle of faultiness<sup>51</sup> meant that married couples had absolutely no possibility to terminate their marriage upon mutual agreement. The interpretation of the legal scholars of those times on this issue was expressed by Károly Szladits, stating that “According to our judicial court practices, the termination of matrimonial life communities upon mutual agreement is immoral. Such immoral acts are inconsistent with the lawful intentions of the institution of marriage, and are, being of such nature, invalid.”<sup>52</sup> Further to the above-mentioned issues, Alajos Knorr also pointed out the issue of different religions of the spouses is, as potential grounds for divorce.<sup>53</sup>

In case of termination, the marriage ceased on the date that the final court order entered into force. According to the respective established court practices, the order stating the termination of marriage had to be presented to the royal high court, the Curia as an official requirement, therefore divorce only became effective on the date of the effective decision order of the highest court forum. Upon the terminating order of the court, marriage was completely ceased; there was no possibility of claiming retrial concerning such a divorce order. From the perspective of matrimonial property law, divorce usually had similar effects to those of the termination of marriage because of death. Therefore, the husband’s right of use on dowry was terminated, and commonly gained properties had to be shared. However, while a spouse was allowed to inherit the respective property, and the wife also had widow rights, in case marriage was terminated due to death, the termination of marriage by divorce broke the inheritance bond between the spouses.<sup>54</sup> Accordingly, as the statement of Alajos Knorr puts it, “Out of the other consequences of marriage, widow’s right<sup>55</sup> stands in for alimony, and the right of the spouse to the other spouse’s inheritance as well as widow’s rights cease upon the termination of marriage by divorce.”<sup>56</sup> Kornél Sztéhlo stated that the court did not make a decision on support claims, but on alimony claims.<sup>57</sup>

Court practices had similar standpoints as the Curia stated in its decision of 1907:

*“Accordingly, the legal nature of the permanent alimony entails that, due to its close connection to the termination of marriage by divorce, as well as in line with § 90 of the Act on Marriage stating that the applicable consideration items for specifying the liability and extent of permanent alimony are the current financial status of the husband deemed to have been at fault as well as the income of the wife deemed not at fault: the permanent alimony claim, just like the issues of faultiness without counterclaim, the right to bear the husband’s name after divorce as well as the*

*placement and support of any minor common child would be discussed and would be assessed and decided on by the court judge in the divorce proceeding, when the judge is in the position of being able to reveal and state the key circumstances to be considered on determining the sum of alimony.*"<sup>58</sup>

Regarding the establishment of the sum and extent of permanent alimony, the court had to take into consideration the financial status of the husband who was declared to be at fault. According to the respective provision of the law, the sum of the alimony specified by the court could be raised, in case certain particular conditions applied.<sup>59</sup> However, while the legislation specified the conditions for raising the sum of final alimonies, it did not at all discuss the issue of deliverability. Károly Szladits referenced the already formed practices as well as the changed social and economic conditions, when he expressed the possibility of decreasing the extent of alimony.<sup>60</sup> The legislator also applied the practice formed and used by court judges, when it had the issue regulated in 1912 by law.<sup>61</sup> According to the respective legislation, the extent of permanent alimony could be modified to the burden of, or for the benefit of either the wife or the husband, as a result of material changes in circumstances serving as the basis for the effective and final court order on the sum of the permanent alimony.<sup>62</sup>

#### 4. Conclusion

As it can be seen from this study, the sufficient settlement of personal and financial relations between spouses is not easy even upon the careful consideration of different aspects. Out of the special rights of women, I only focused on summarising the issues of alimony regulations. In the course of my work, I actually found that even the subject of alimony is rather comprehensive, and is very hard to regulate by legislative means, as there are very diverse cases in real life, having special particularities in each case. By means of stipulating the rules of the Act on Marriage, the legislator established legal norms that could be very well applied in court practices. As Károly Szladits wrote, society and economy are not systems with static content, but rather organisations that are in constant move and development. Accordingly, court practices also had to adapt to such changes.<sup>63</sup> The key court forum of the era, i.e., the Curia, successfully faced the challenges of everyday life through the practices established in the subject. That is why I believe that the legal institution subject to my study cannot be examined without the orders and decisions in principle made by the Curia. I believe that I have been able to discuss the issues of alimony for the readers in a transparent manner, hoping that they will raise questions, allowing the research to be continued in order that such questions could be found in further literature sources. Furthermore, the study can also be a basis for further consideration in terms of the current social and economic relations, as I believe that the subject of alimony may become an issue to be discussed by the current legislators well, because the new Hungarian Civil Code (Act No. 5 of 2013) regulates this legal institution again.

#### Notes and references

<sup>1</sup> Namely a daughter's right for a quarter share of her father's belongings (*quarta puellaris*), orphan unmarried daughter right (*ius capillare*), widow's right (*ius viduale*), morning-gift (*dotalitium*), bridal gift (*res parafarnales*), dowry (*allatura*), community property (*co-acquisita coniugum*). See ECKHART, Ferenc: *Magyar alkotmány- és jogtörténet [History of Hungarian Constitution and Law]*. MEZEY, Barna (ed.). Budapest, 2000. Osiris Kiadó, 303–309.; HOMOKI-NAGY, Mária: Jegyajándék [Bridal Gift]. In KŐSZEGHY, Péter – TAMÁS, Zsuzsanna (eds.): *Magyar művelődéstörténeti lexikon: középkor és kora újkor [Lexicon of Hungarian Cultural History. Middle Ages and Early New Age]*. Budapest, 2005. Balassi Kiadó, 443–444.; HOMOKI-NAGY, Mária: Hitbér [Dower]. In KŐSZEGHY-TAMÁS (eds.) 2005. 141. After the entry into force of the Act No. 31 of 1894, the secular and ecclesiastical aspects of marriage law were separated in Hungary. See HOMOKI-NAGY, Mária: *Die Kodifikation des ungarischen Zivilrechts im 19. Jahrhundert. Rechtsgeschichtliche Vorträge 25*. Budapest, 2004. ELTE Állam- és Jogtudományi Kar, 10. <https://majt.elte.hu/kiadvanyok/rechtsgeschichtliche-vortrage>. Accordingly, the possibility of terminating marriage occurred as a key new element, which could now be exercised by everyone – i.e., even Catholic people, who accepted this issue regardless of their religious beliefs. (The following study also deals with the consequences of introducing the secularised divorce rights, written by Csabáné HERGER: The Introduction of Secular Divorce Law in Hungary 1895–1918. Social and Legal Consequences for Women. *Journal on European History of Law*, No. 2, 2012. 138–148.) For this reason, the legislator wished to provide for

the sufficient financial means of women after the termination of marriage by means of extending the time scope of the husbands' financial obligations effective during the term of marriage – alimony – to the period after the end of marriage, upon the existence of certain conditions. Accordingly, my standpoint is that alimony is to be classified as one of the special rights of women. As Csabáné Herger emphasized in her study, the sources of law on alimony took over the institutions commonly applied in denomination law, with certain modifications. See HERGER, Csabáné: A nőtartás a Magánjogi Törvénykönyvben (1928) a 19. századi előzmények tükrében [Alimony in Private Law Code (1928) in the contexts of 19<sup>th</sup> century background]. *JURA*, No. 2, 2011. 70–83.

<sup>2</sup> STAUD, Lajos: *A magyar magánjog tételes jogszabályainak gyűjteménye [A Collection of Specific Private Law Legislations]*. Budapest, 1913. Franklin Társulat, 1913. 59.

<sup>3</sup> KOLOSVÁRY, Bálint: *A magyar magánjog tankönyve II. [A Coursebook on Hungarian Private Law, Vol. 2]*. Budapest, 1911. Grill Károly Könyvkiadóvállalata, 435.

<sup>4</sup> RAFFAY, Ferenc: *A magyar magánjog kézikönyve I. [A Handbook on Hungarian Private Law, Vol. 1]*. Budapest, 1909. Benkő Gyula Könyvkereskedése, 444.

<sup>5</sup> SZLADITS, Károly: *A magyar magánjog vázlatja [A Draft of Hungarian Private Law]*. Budapest, 1933. Grill Károly Könyvkiadóvállalata, Part II, 341.

<sup>6</sup> "A woman's claim for alimony is based on the lifelong community extent of marriage, therefore this liability is an obligation that can be

- derived from the definition of the term ‘marriage’.” SZTEHLO, Kornél: A nőtartási igények [Alimony Claims]. *Jogtudományi Közlöny [Jurisprudential Bulletin]*, No. 10, 1885. 78.
- <sup>7</sup> SZTEHLO, Kornél: *Házassági eljárás joga [Laws on Marriage Procedures]*. Budapest, 1890. Franklin Társulat, 114.
- <sup>8</sup> VIRÁG, Gyula: *A házasság felbontásának joga Magyarországon. Gyakorlati kézikönyv a jogász és a laikus közönség számára [The right to divorce in Hungary. A practical guide for lawyers and laypersons]*. Budapest, 1904. Athenaeum Irodalmi és Nyomdai Rt. 69.
- <sup>9</sup> Decision No. 1908.G.203 of the Nagyvárad Royal Court. STAUD 1913. 60.
- <sup>10</sup> MÁRKUS, Dezső (ed.): *Magyar Jogi Lexikon [Hungarian Legal Dictionary]*. Vol. 6. Budapest, 1907. Pallas Irodalmi és Nyomdai Rt. 119. [MJL]
- <sup>11</sup> MJL, Vol. 6, 1907. 492.
- <sup>12</sup> MJL, Vol. 4, 1903. 119.
- <sup>13</sup> Act No. 31 of 1894, § 90 <https://net.jogtar.hu/ezer-evtortveny?docid=89400031.TV>.
- <sup>14</sup> Regarding the extent of alimony, there was a differentiation between the essential alimony, which basically contained coverage for basic life necessities, such as food, accommodation and clothing; while the other type was the rank-related alimony, which included the life necessities of the person entitled for the alimony in line with the person’s social situation and in line with the alimony payer’s financial means. For more details, see MJL, Vol. 6, 1907. 491.
- <sup>15</sup> RAFFAY 1909. 444.
- <sup>16</sup> SZTEHLO 1890. 114.
- <sup>17</sup> SZLADITS 1933. Part II, 341.
- <sup>18</sup> Ibid. 342.
- <sup>19</sup> KOLOSVÁRY 1911. 436.
- <sup>20</sup> VIRÁG, Gyula: *A férj, feleség s a gyermek jogviszonyai. Családjogi tanulmányok [Legal relations of husbands, wives and children. Studies on Family Law]*. Budapest, 1907. Athenaeum Irodalmi és Nyomdai Rt. 18.
- <sup>21</sup> Decision No. 1908.G.203 of the Nagyvárad Royal Court. STAUD 1913. 60.
- <sup>22</sup> [https://en.wikipedia.org/wiki/Dowry#/media/File:Wassilij\\_Wladimirowitsch\\_Pukirew\\_001.jpg](https://en.wikipedia.org/wiki/Dowry#/media/File:Wassilij_Wladimirowitsch_Pukirew_001.jpg).
- <sup>23</sup> MJL, Vol. 4, 1903. 119. The same grading was applied by Raffay as well. RAFFAY 1909. 444.
- <sup>24</sup> Ibid.
- <sup>25</sup> SZLADITS 1933. Part II, 342.
- <sup>26</sup> KNORR 1899. 1.
- <sup>27</sup> KOLOSVÁRY 1911. 435.
- <sup>28</sup> “During shared living in marriage, a woman may usually only request alimony in kind, at the husband’s household.” SZLADITS 1933. Part II, 343.
- <sup>29</sup> ALMÁSI, Antal: Házassági jog [Matrimonial Law]. In SZLADITS, Károly (ed.): *Magyar magánjog II. Családi jog [Hungarian Private Law II. Family Law]*. Budapest, 1940. Grill Károly Könyvkiadóvállalata, 238.
- <sup>30</sup> Decision of Curia 9247/1895., I. G. 72/1897., 524/1902.
- <sup>31</sup> RAFFAY 1909. 444.
- <sup>32</sup> SZTEHLO 1890. 114.
- <sup>33</sup> ALMÁSI 1940. 239.
- <sup>34</sup> MJL, Vol. 4, 1903. 119.
- <sup>35</sup> MJL, Vol. 6, 1907. 492.
- <sup>36</sup> Although it is not named specifically, but the two kinds of temporary alimony are present in the standpoint.
- <sup>37</sup> KOLOSVÁRY 1911. 436.
- <sup>38</sup> For more details, see MJL, Vol. 4, 1903. 119.
- <sup>39</sup> Ibid.
- <sup>40</sup> SZLADITS 1933. Part II, 341–343.
- <sup>41</sup> VIRÁG 1907. 22.
- <sup>42</sup> E. H. Elvi határozat [Decision in principle]. 730. In SZLADITS 1940. 242.
- <sup>43</sup> KNORR 1899. 108.; Decision No. 5648/904. of the Curia (8 February 1905): „As the claimant woman did not claim support in the course of the divorce proceeding against the defendant, and, moreover, she claimed that she did not want to claim alimony and thus expressly waived her right to alimony; after the decision made on the divorce proceeding and stating the non-claim of alimony becomes final, such alimony claim can no longer be claimed.”
- <sup>44</sup> Curia: 20 May 1905 I. G. 52: “Defendant locked away from Claimant the food, even bread, not even providing for Claimant enough food for a child throughout their cohabitation, and had Claimant starved; and this condition provides sufficient grounds for the Claimant to terminate cohabitation with Defendant and that Defendant could claim to receive special alimony.”
- <sup>45</sup> KNORR 1899. 107.
- <sup>46</sup> Curia: 4 January 1906 No. 356: “Living in marriage was abruptly by the Claimant; however, during the term of the cohabitation of marriage, the defendant had sexual intercourses with other women as well; this latter circumstance, although it was revealed to the claimant only after her leaving the defendant, is, from a legal perspective, sufficient for concluding that the separation of the parties of the proceeding can be found to be only attributable to the fault of the defendant; and, as a conclusion, the defendant can be obligated to pay temporary alimony to the claimant.”
- <sup>47</sup> Act No. 31 of 1894, § 90.
- <sup>48</sup> Curia 1907:6180. STAUD 1913. 37.; E. H. [decision in principle] 28 March 1916. P.III. 10926/1915 New Dt. 1816/240. No. 245. MESZLÉNY, Artur: *Magyar magánjog. I. kötet, II. rész [Hungarian Private Law, Vol. I, Part II]*. Budapest, 1929. Grill Károly Könyvkiadóvállalata, 131–132. Detailed information: *Polgári jogi határozatok tára [Archives of civil law orders]*. Vol. 3. Budapest, 1925. M. Kir. Igazságügyminisztérium, 13–14.
- <sup>49</sup> KNORR 1899. 63.
- <sup>50</sup> SZTEHLO 1890. 114–115.
- <sup>51</sup> “Faultiness is the basis of the legal system for today’s divorce proceedings.” RÉVAY, Bódog: A házassági bontóperi vétkenység kérdése [The Issue of Faultiness in Divorce Proceedings]. *Jogtudományi Közlöny [Jurisprudential Bulletin]*, Vol. 11, 1919. 84.
- <sup>52</sup> SZLADITS 1940. 242. This was also supported by Decision No. 4317/1933 of the Curia.
- <sup>53</sup> “Difference in the religion is also not a reason for divorce. According to the ethical term of marriage, marriage is a bond meant to last throughout life; and in case the law allows the court termination of a marriage, the act on matrimonial law has such determining and binding effect that the respective judge can only establish their decision on that law, even if a Hungarian citizen gets married abroad”. KNORR 1899. 67.
- <sup>54</sup> MJL, Vol. 4, 1903. 66.
- <sup>55</sup> As it was stated by Bálint Kolosváry: “[...] because widow’s right is only the continuation of the alimony payable by the husband during his life, which alimony, in widow’s rights is ensured for the woman in contrast to the heirs. Naturally, widow’s right is not “succession inheritance”, but it is still inheritance.” KOLOSVÁRY 1911. 662.
- <sup>56</sup> KNORR 1899. 123.
- <sup>57</sup> “The claim for support will only become an *alimony* claim upon the cessation of the spouses’ living together in marriage, and in case of which the court will specify a sum in cash, generally in monthly instalment, which is to be paid by the husband as an equivalent to the in-kind support taken from the woman.” SZTEHLO 1890. 114.
- <sup>58</sup> Curia 6180/1907. STAUD 1913. 37.
- <sup>59</sup> Act No. 31 of 1894, § 91
- <sup>60</sup> SZLADITS 1940. 252.
- <sup>61</sup> Act No. 54 of 1912, § 3: repealed § 91 of Act No. 31 of 1894.
- <sup>62</sup> It appeared in practice in decision No. 4005/1936 of the Curia. SZLADITS 1940. 253.
- <sup>63</sup> Ibid.



When defining *stellionatus*, just like in the case of other legal institutions, one should interpret the legal term by proceeding – as far as possible – from its original meaning as a starting point and not by “thinking backwards” and attempting to unravel its history proceeding from some present-day criminal offence. Although the latter approach may be useful dogmatically from the aspect of statutory law, it is problematic, since it does not have regard to the historical development of the term and therefore that kind of approach is often a simplifying one from the aspect that – while concentrating on a criminal offence existing today – it may disregard the elements that cannot fit into the present-day statutory elements of the offence of fraud. Therefore, for a legal historian it is worth examining when this term appeared in Hungarian law, what content it had at that time, how it was interpreted, then how it was translated during the formation of Hungarian legal terminology. It is through tracking this development that one can present the conceptual changes the term had gone through by the time the statutory elements of fraud were formulated by the codification of criminal law in the 19<sup>th</sup> century.

### 1. Definition of *stellionatus* by translation and word explanation

Defining *stellionatus* by way of translating the term may seem easy: fraud; this word is given for it, for instance, in *Pallas's Great Encyclopaedia (Pallas Nagy Lexikona)*, which – besides the Latin origin of the word – also indicates that it is a *crimen*.<sup>1</sup> The term is already present in the first Hungarian–Latin dictionary, which defines *stellionatus* as: “Fraudulence in fraternizing, treachery and other forms of fraudulence in contract, when something is sold to two persons.”<sup>2</sup> Likewise, the most widespread 19<sup>th</sup> century dictionary provides not a mere translation, but also an explanation: “any form of fraud or bribery, forgery that is not separately specified by the Act”.<sup>3</sup> This suggests that *stellionatus* was a subsidiary statutory offence that covered those fraudulently committed acts that were not defined as a separate delictum and included some types of forgery as well. However, these definitions are useless in a legal sense and imprecise with regard to the era they refer to, therefore explaining the exact content of the legal institution is a lot more complicated than this.

At the time of the publication of the Finály dictionary, criminal offences had already been codified by Act No. 5 of 1878, and under the modern principle of *nullum crimen sine lege*, only conduct that was punishable under the law was deemed a criminal offence. However, § 379 of the Criminal Code contained a provision relating not to *stellionatus*, but fraud instead: “Fraud shall mean when a person uses deceit, deception, or trickery for unlawful financial gain either for himself or another person, and thereby causes damage.” The further sections of the Act lay down details of other forms of conduct by which the offence may be perpetrated, then the following chapters

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deal with forgeries and fraudulent and culpable bankruptcy. Therefore, the first Hungarian Criminal Code did not take one closer to the interpretation of the term *stellionatus*, one had to examine an earlier period.

Early 19<sup>th</sup> century Hungarian legal terminology had not found an appropriate term for each situation, this gap was attempted to be bridged over for the first time by the *Dictionary of Jurisprudence (Törvénytudományi műszótár)* published by the Hungarian Learned Society (Magyar Tudós Társaság, i.e., the Hungarian Academy of Sciences) in 1843, pursuant to which the *crimen stellionatus* is nothing else but the crime of trickery and fictitious contract.<sup>4</sup> As opposed to this, in the first contemporary work of criminal law literature written in Hungarian, *crimen stellionatus* means the crime or felony of deceitfulness, and the same manual mentions so-called world-fraud (fraud committed against a large group of people) and tricky fraud as identical terms.<sup>5</sup> The use of terminology is not stable, since although the editors of the legal technical dictionary also had regard to works containing the terms listed above when compiling their volume,<sup>6</sup> they announced other new alternatives for *stellionatus*. Being aware of the fact that Chapter XVIII of the draft Criminal Code completed in the same year was entitled *On Fraud*, we are left with the sole logical conclusion: namely, it was on purpose that the creators of the dictionary did not use the word “fraud”, since its modern concept did not perfectly match the meaning of *stellionatus*. Therefore, one has to go back further in time to find the explanation.

### 2. *Stellionatus* and other fraudulent behaviours in the old Hungarian legal sources

The examination of the old sources of our law soon produces a negative result. Neither our laws before 1848, nor the *Tripartitum* contain *stellionatus*, although they deal with other fraudulent behaviours in several cases.<sup>7</sup> Proceeding from the concise definitions mentioned above, our investigations may be focussed on any shrewd, fraudulent action that results in deceiving others, regardless of whether it causes harm or benefit to anybody or not. It is worth briefly reviewing forgeries as well.

In *Corpus Juris Hungarici*, one may read about forgers of charters and seals in several places. By them our laws meant not only the writers of falsified letters and the carvers

of false seals, but also persons who – while being aware of the falseness – used them. These felonies qualified as instances of disloyalty (*nota infidelitatis*) and were punishable by death and forfeiture of property. They were later removed from this most serious category of offences by Acts No. 11 and 12 of 1723, however, in addition to compensation for the harm caused, these Acts still held out the prospect of capital punishment for the makers of false charters and seals as well as for those who knowingly used such false charters in law courts if by this “they lay in ambush to take the life of others”. Those who caused harm only in the property of others were punishable by dishonour apart from being ordered to pay financial compensation. The makers of false passports or private documents were to be punished less seriously based on judicial discretion.

Abuse and falsification of the standard units of measurement was also classified as a public criminal offence under the Act No. 16 of 1588 and later the Act No. 31 of 1655, amending Article 6 of Sigismund’s Decree (II) of 1405. This regulation was supplemented in the 16<sup>th</sup> and 17<sup>th</sup> centuries by numerous statutes of such content of the counties and free royal boroughs.<sup>8</sup>

In the *Tripartitum*, apart from the acts of forgery related to cases of disloyalty, one may also come across transactions concluded by cheating others – more specifically, contracting parties or relatives – and other insincerities providing the fraudulent person with a benefit. These acts are not restricted to depriving a sibling of inheritance (*proditio fraterni sanguinis*) or *larva*, in other words, acting while impersonating someone else.<sup>9</sup> The *Tripartitum* mentions fraudulence (*fraus*), acting in a fraudulent manner (*fraudulenter, fraudulenta modo*) by pretending and simulating (*liete et simulate*) and treachery (*dolus*), and acting treacherously (*dolosus*), machinating treacherously (*dolosa machinatione*).<sup>10</sup> However, the *Tripartitum* does not lay down a punishment for committing these acts in every case, such acts may also result in civil sanctions merely (e.g. returning the estate). On the other hand, other acts are judged more seriously and the person carrying out the act is often punished (apart from pecuniary sanctions – such as deprivation of inheritance) by dishonour or even more severely. As a matter of course, the norms of the *Tripartitum* cannot be considered by projecting our present-day approach on them – sharply distinguishing between private law and criminal law –, since by that time no distinction had been made between these branches of law. Nevertheless, what is of key importance with regard to our topic is the following: the above-mentioned acts realized in a similar manner are not summed up under one heading as fraud (or types of fraud).

The first substantial national source in Hungary containing *stellionatus* is the *Praxis Criminalis (Forma processus iudicii criminalis, seu Praxis Criminalis)*, originating from the *Ferdinanda (Neue peinliche Landtgerichtsordnung in Oesterreich unter der Ennß)* and its translation into Latin at the end of the 17<sup>th</sup> century. However, this work never became an officially recognized source of law in Hungary; therefore, beginning from the following century, it spread only by way of customary law and it could not generally be applied in criminal cases involving noblemen. Neverthe-

less, it had a great impact on judicial practice and evolving Hungarian criminal jurisprudence.

Article 94 of the *Praxis Criminalis* contains fraud or *stellionatus*, more specifically, special deceitfulness or fraudulence that cannot be foreseen or prevented even by a prudent person: “*De fraude astuta, et iniqua, quam etiam prudens quispiam praevidere, aut praecavere non possit, seu Stellionatu*”.

Pursuant to the further sections of this article, the essence of *stellionatus* is malice and deceitfulness, which is being spread by wicked people and so increasing continuously and having so many types that it is almost impossible to find names for all of them. In spite of this, the *Praxis Criminalis* enumerates the main methods used by fraudsters in their acts: under the pretext of exchanging or counting money they hide the money in their sleeves, they replace one of the pledged assets secretly, sell the same thing several times, demand the already repaid debt once more and “riskily, they give their own name in such a way so as to prevent the real contracting party from being revealed, thereby deceiving the third party”.<sup>11</sup>

These dangerous fraudsters were treated more seriously by the *Praxis Criminalis* than ordinary thieves, and they could be punishable even by death. During sentencing the court had regard to the extent of wickedness and the harm caused. As for the applicable procedure, the rules pertaining to theft and forgery were to be followed.

However, *stellionatus* did not include forgeries: money forgery, seal and letter forgery or the forgery of scales, measures and other items used in trade. These crimes were regulated in separate articles.<sup>12</sup>

### 3. The 18<sup>th</sup> century Hungarian criminal law literature and the 1795 draft

The 18–19<sup>th</sup> century’s Hungarian criminal law literature contains several, partly conflicting views on the nature of “fraud”. Some of the works do not even mention *stellionatus* at all, instead the diverse cases of fraudulence – partly already covered by the *Praxis Criminalis* or national sources of law – are enumerated under the heading *falsum, crimen falsi*. Researching the works of early legal scholars may be of interest also for the reason that at the time one may only speak of the evolution of the national science of criminal law and its literature and, therefore, these works constitute the first steps in developing criminal law dogmatics as well as efforts at constructing and defining legal terms earlier missing from Hungarian law and at making distinctions between different crimes from a theoretical aspect.<sup>13</sup>

The term *stellionatus* is mentioned and discussed by Matthias Bodó in Article XCIX of his work published in 1751.<sup>14</sup> However, in his work dating from nearly the same period, Stephanus Huszty merely discusses the cases and definition of *crimen falsi*, he does not even make mention of the term *stellionatus*.<sup>15</sup> Similarly, Matthias Vuchetich – in his textbook-like work written at the beginning of the 19<sup>th</sup> century and manifesting familiarity with modern academic



literature – also primarily discusses *falsum*, in addition to which a special delictum called *dolosa decoctio* appears.<sup>16</sup> Then the term *stellionatus* occurs again in the criminal law textbook authored by Pál Szlemenics, then later in the one written by Tivadar Pauler. The former author merely mentions the term while citing Matthias Bodó,<sup>17</sup> whereas the latter uses the term while expounding on “fraud”.<sup>18</sup> It is also worth referring to the fact that at the beginning of the 19<sup>th</sup> century – due to the peculiar approach applied in the era –, some private offences were discussed in textbooks on private law, some of which also contained the term *stellionatus* in connection with masqueraders (*personae larvata*).<sup>19</sup>

However, the above authors’ writings overarch more than one century; therefore, one cannot expect them to present a unified approach, and in the meantime criminal law also underwent significant changes, let us just think of its codification. Therefore, the present paper merely ventures to provide an overview of works dating from the 18<sup>th</sup> century. Comparing these works with each other and the sources of law of the era can no longer be subject to the criticism of anachronism.

Matthias Bodó defined *stellionatus* as an act of particularly wily fraudulence that cannot be foreseen or presumed even by a prudent person. This definition is literally identical with the one contained in *Praxis Criminalis*, only the formulation of the start of the sentence being slightly different “*De stellionatu, seu fraude specialiter astuta, ...*”<sup>20</sup> Further he lays down that, in the case of *stellionatus*, one may speak of the most scheming form of fraudulence, and he discusses it as a special type of crimes. By it he means crimes that do not come under other titles. As an explanation he states that in cases of fraudulence of such magnitude – or even the greatest magnitude – a criminal court should proceed, while a claim pertaining to ordinary fraudulence could be filed with a civil court. So, in his case one may already discern that the act may be approached either from the aspect of civil law or criminal law, which aspects may be separated from each other.

It is also worth examining what is meant by crimes lacking any other title (“*altero titulo Criminis deficiente*”). Al-

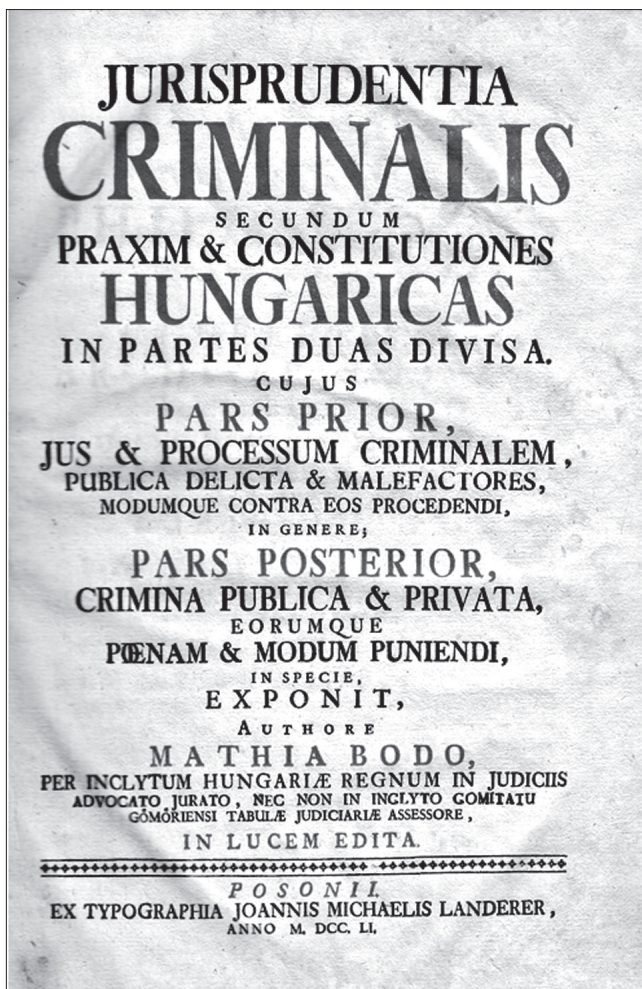
though the author enumerates the acts in the case of which *stellionatus* may be established, obviously, numerous cases termed differently and discussed under a separate name in his work do not belong here. Such are in particular *falsum* or *crimen falsi*, which are explained in Article XCI and which are defined in general as acts of intentionally distorting the truth with the aim of causing harm or injury to the rights of

others and which are punishable under public law.<sup>21</sup> However, he mentions under a separate heading false judges, lawyers, witnesses and accusers,<sup>22</sup> the makers of false charters and seals,<sup>23</sup> the falsifiers of scales, weights, measures, etc.,<sup>24</sup> as well as masked persons.<sup>25</sup> Therefore, these types of *crimen* specified separately do not come within the notion of *stellionatus*.

At the same time, apart from the above, Bodó enumerates the following cases where *stellionatus* may be established: if a person, concealing an earlier commitment, repeatedly pledges an already pledged thing or pays with a thing that has already been handed over; or – under the pretext of changing money – provides in exchange something lacking in value or something false; or sells the same thing several times in such a manner that he hands over the item being shown exchanging it (invisibly) for something lacking in value;

or demands an already paid debt; or – concealing his own name – adopts someone else’s name and takes out a loan under that person’s name, or deceives or causes harm to the contracting party in some other way. In addition to the above, under a separate point he also mentions as coming within this category the case where a person, temporarily concealing the illness or disability of weakened livestock, sells the animals as if they were healthy and flawless.<sup>26</sup>

With regard to punishment, the first part of the description is literally identical with that contained in the *Praxis Criminalis*: in serious cases the perpetrators of the act may be punishable even by capital punishment and they are to be judged more harshly than common thieves. However, this rule is supplemented in sections V–VI by the provision that, where the act is committed in an ordinary manner, the perpetrator is to be ordered – based upon judicial discretion – to simply refund the money, to be deprived of the fraudulently sold assets and to compensate for the damage



caused. However, where the crime is committed under circumstances involving an oath, then the perpetrator is to be punished additionally by bloodwite (*homagium*) “due to his audacity”, or some other form of serious punishment may also imposed on him according to the severity and qualification of the act.

In connection with the imposable punishment, Bodó points out two cases of *stellionatus* specified by him as separate categories, concerning which he states that they fall under *calumnia*, or *larva*, and that they are punishable accordingly. With regard to those demanding an already repaid debt, he cites *Tripartitum*, Chapter II Title 70, and *Directio Methodica*, Chapter 9 Question 16, on *calumnia* and its punishment. As for those who take out a loan under another person’s name, he points out – referring back to an earlier article on this in his own work – that they are punishable as thieves or masqueraders according to the qualification of the crime. At first glance, these types of conduct seem to constitute such delicti that also appear as separate statutory offences. However, upon a closer look, these individual cases coming under *stellionatus* are merely extremely similar to the definitions of *calumnia* or *larva* and therefore they are subject to the same punishment. For instance, with regard to the former, the *Tripartitum* and *Directio Methodica* merely mention the case of demanding an already cancelled debt, which is although very similar, but not the same as suing someone on the basis of a debt that has already been repaid. Likewise, when providing a definition for *larva*, Bodó specifically mentions those who push their way into another family under an adopted fictitious name and cause some wrong (for example, by acquiring an inheritance, the family’s assets, or privileges for themselves).<sup>27</sup> This is related to the act classified as *stellionatus* only broadly. Taking out a loan under the name of another person does not necessarily mean that the perpetrator lives under a false name permanently; this kind of fraud may also be committed in the manner that the person in question conceals his identity only for the time of the transaction, for instance, to prevent tracking him later. Moreover, a loan of however high an amount cannot be compared with a situation where the name and fortune of noble families are at stake or wronged due to a masquerading usurper – in other words, a difference may also be observed in the extent of harm and the circle of victims. However, since these forms of perpetration are noticeably related, the sanction corresponds not to the punishment imposed for *stellionatus*, but to the penalty for *calumnia* and *larva*.

As opposed to Bodó, Stephanus Huszty does not use the term of *stellionatus* at all, neither this, nor *fraus astuta* may be encountered in his work. Title XXXI of his book is “*De crimine falsi*”.<sup>28</sup> He defines *falsum* here in both a broader and a narrower meaning. According to his broader interpretation, perfidy (*falsum* in general) means anything that is not true, even if it happens not as a result of the fraudulence or intention of a person, while in a narrow sense, the crime of *falsum* (in fact, *crimen falsi*) covers acts that are punishable under the law. Under this category he classifies perjury (*perjurium*), maskering (*larvata persona*), the audacious denial of consanguinity up to the fourth generation (*temera*

*negatio consanguinitatis carnalis intra quartum gradum*), blood betrayal (*proditio fraterni sanguinitatis*), as well as the making of false instruments and false seals (*confectio falsorum instrumentorum, falsorum sigillorum*), and the intentional use of false instruments (*usus dolosus falsi instrumenti*). However, this enumeration is not exhaustive; in all probability, he only lists the most frequent cases of *crimen falsi*, as in the next paragraph he provides a more general definition for these cases: “*Definitur crimen falsi, quod sit veritatis immutatio, in alterius praejudicium facta, publico jure poenaliter prohibita.*” Then expanding this definition, he provides further details, namely, that the preconditions for establishing the commission of *falsum* include that there be intent (*dolus*), distortion and changing of the truth (*veritatis immutatio*), and causing harm to others or, at least, causing injury to the rights of others (*damnum alicui, aut saltem praejudicium inferatur*). However, before expounding on all this, he deals with the fourth element of the definition and remarks that *falsum* – as a public offence – covers only acts that are prohibited under the threat of punishment (*poenaliter prohibita*). Lying, therefore, does not belong here, as lying in itself is not prohibited by law and, thus, it is not regarded as coming under *crimen falsi*.

During the later codification of criminal law in the 19<sup>th</sup> century, Huszty’s definition of *crimen falsi* was compared with the explanation of *stellionatus* in Matthias Bodó’s work.<sup>29</sup> However, this comparison is hardly tenable, since its formulator does not seem to have considered that Bodó also mentioned *crimen falsi*, moreover, with content rather similar to that described by Stephanus Huszty. Bodó also defines *falsum* in both a broader and a narrower sense, the broad definition including everything that is not true, while in a narrow sense, crimes of *falsum* include acts that are punishable under the law.<sup>30</sup> Both the enumeration of cases belonging here – from oath-breaking to blood denial – and the definition of the elements of the criminal offence (*dolus, veritatis suppressio, damni, aut, praejudicii illatio*) clearly correspond to those presented by Huszty. Therefore, only one conclusion may be drawn from the above, namely, that only one of the two 18<sup>th</sup> century authors mentions *stellionatus* as a separate criminal offence.

From the end of the 18<sup>th</sup> century, it is also worth mentioning the draft legislation of 1795 on criminal law,<sup>31</sup> a peculiar feature of which lies in the fact that although it contains *stellionatus*, it identifies it with *falsum*. One may recognize the legislator’s endeavour in codification: he formulates a general, but too broad definition for fraud (changing or concealing the truth through any instance of perfidious cunning aimed at deceiving or causing harm to others), and right away he also questions it by attempting – although he indicates that this may be impossible – to enumerate all the types of fraud from a) to v) in an exhaustive manner.<sup>32</sup> Therefore, when establishing the statutory elements of the offence, the makers of the draft do not reach a higher level of abstraction, moreover, compared to the authors presented earlier it may even be evaluated as a backward step that they blend *stellionatus* with *falsum*, thereby rendering it more difficult to clearly delimit the criminal offences in question.

## Notes and references

- <sup>1</sup> *A Pallas Nagy Lexikona: az összes ismeretek enciklopédiája [Pallas's Great Encyclopaedia: The Encyclopaedia of All Knowledge]*. Vol. 3. Budapest, 1897. Pallas, 204.
- <sup>2</sup> PÁRIZ PÁPAI, Franciscus: *Dictionarium Latino-hungaricum*. Cibinii, MDCCLXXXII.
- <sup>3</sup> FINÁLY, Henrik: *A latin nyelv szótára [Dictionary of the Latin Language]*, Budapest, 1884. Franklin Társulat.
- <sup>4</sup> *Törvénytudományi műszótár [Technical Dictionary of Jurisprudence]*, Pest, 1843. Magyar Tudós Társaság, 101.
- <sup>5</sup> SZLEMENICS, Pál: *Fenyítő törvényszéki magyar törvény [Hungarian Penal Court Law]*, Buda, 1836. Magyar Királyi Egyetem, 137.
- <sup>6</sup> *Törvénytudományi műszótár [Dictionary of Jurisprudence]*. VI–XI.
- <sup>7</sup> Some authors have detected acts in the decrees of St. Stephen [Szent István] and St. Ladislaus [Szent László] that may be regarded as the predecessors of fraud. MADAI, Sándor: A csalás tényállásának hazai előképei az államalapítástól a felvilágosodás koráig [Hungarian preliminaries to the statutory offence of fraud from the foundation of the state to the Enlightenment]. *Jogtörténeti Szemle [Review of Legal History]*, No. 4, 2009. 17–20.
- <sup>8</sup> BÉLI, Gábor: *Magyar jogtörténet. A tradicionális jog [Hungarian Legal History. Traditional Law]*. Budapest–Pécs, 2000. Dialóg Campus Kiadó, 193.
- <sup>9</sup> Sándor Madai – in the wake of Tivadar Pauler and Pál Angyal – mentions only two “fraud-like crimes”: masquerading and blood denial, although he intentionally disregards wrongs of private law character. MADAI 2009. 18.
- <sup>10</sup> WERBŐCZY István Hármaskönyve [Tripartitum]. I. 36., I. 37. § 9, I. 38., I. 39., I. 71., I. 86., I. 123., I. 125., II. 14. § 81, II. 15. § 2, II. 16., I. 24. § 7, II. 29–30., II. 70., 80. § 4, II. 83. § 4–5, II. 74. § 8, § 11.
- <sup>11</sup> „*suum nomen in hunc finem periculose cummodant, ne verus contrahens sciatur, et sic tertiusdeciatur, ac damnum patiatur*”
- <sup>12</sup> *Praxis Criminalis* Art. 87., 88., 89.
- <sup>13</sup> BÉLI, Gábor: Strafrechtspraxis und Strafrechtswissenschaft in Ungarn im 18. Jh. In MEZEY Barna (ed.): *Strafrechtsgeschichte an der Grenze des nächsten Jahrtausendes*. Budapest, 2003. Gondolat Kiadói Kör, 118.
- <sup>14</sup> BODÓ, Matthias: *Jurisprudentia criminalis secundum praxim et constitutiones Hungaricas*. Posonii, 1751. 314.
- <sup>15</sup> HUSZTY, Stephanus: *Jurisprudentia practica seu commentarius novus in jus Hungaricum*, Buda, 1745.
- <sup>16</sup> VUCHETICH, Matthias: *Institutiones juris criminalis Hungarici*, Buda, 1819.
- <sup>17</sup> SZLEMENICS, Paulus: *Elementa juris criminalis hungarici*, Posonii. 1817. Hungarian adaptation (first edition): *Fenyítő törvényszéki magyar törvény [Hungarian Penal Court Law]*, Buda, 1832.
- <sup>18</sup> PAULER, Tivadar: *Büntetőjogtan [Study of Criminal Law]*, Pest, 1870. Pfeifer, 269–270.
- <sup>19</sup> CZÖVEK, István: *Magyar hazai polgári magános törvényről írt tanítások [Teachings on Hungarian Private Civil Law]*, Pest, 1822. 704.; FOGARASI, János: *Magyar közpolgári törvénytudomány elemei (Kövy Sándor után), [Elements of Hungarian Civil Jurisprudence (based on Sándor Kövy)]*, Pest, 1842. 314–315.
- <sup>20</sup> BODÓ 1751. 314.
- <sup>21</sup> „*Falsi autem Crimen est dolosa veritatis immutatio, vel suppressio, in alterius damnum et praejudicium facta, Publico Jure poenaliter prohibita. Seu, Falsum est, quod animo corrumpendae veritatis, in alterius fraudem seu perniciem, dolo malo fit.*” Ibid. 300.
- <sup>22</sup> Articulus XCII. *De falso Judice, Procuratore, Testibus et Delatoribus*. Ibid. 302.
- <sup>23</sup> Articulus XCV. *De Falsarum literarum, Sigillorum et c. Confectionibus*. Ibid. 307.
- <sup>24</sup> Articulus XCVI. *De Iis, qui Libram, Pondus, Ulnas, Mensuras, Mercas, et alias Res falsificant*. Ibid. 310.
- <sup>25</sup> Articulus XCVII. *De Larvatis Personis*. Ibid. 311.
- <sup>26</sup> Ibid. 314.
- <sup>27</sup> „*Larvatae pp.ersonae sunt illae, alterus familiae nomen seu cognomen assumunt, et subhocce ficto et larvato nomine, ac Persona, sive successionem et haereditatem in alterius Familiae bonis, seu praerogativas, ni damnum et praejudicium legitimarum Familiarum, dolose sibi vendicare attentat.*” Ibid. 311.
- <sup>28</sup> HUSZTY 1745. 120.
- <sup>29</sup> A büntető törvénykönyv indokolása [Explanatory Notes on the Criminal Code]. In *Képviselőházi irományok [Papers of the House of Representatives]*. 1875. Vol. 9, No. 372. 300.
- <sup>30</sup> „*Falsum, latiori, latiori significatione, dicitur omne id quod non est verum.*” „[...] *falsum strictiori sensu accipitur, pro Crimine illo, quod de jure poenaliter est.*” BODÓ 1751. 300.
- <sup>31</sup> Kódex a büntettekről és azok büntetéséről [Code on Crimes and Their Punishment]. Hungarian translation of the Latin draft in the appendix of HAJDU, Lajos: *Az első (1795-ös) magyar büntetőködextervezet [The First (1795) Draft of Hungarian Criminal Code]*. Budapest, 1971. Közgazdasági és Jogi Könyvkiadó, 387–512.
- <sup>32</sup> Ibid. 489–492.



## 1. Theoretical underpinning

Due to the French Criminal Code of 1791 and, subsequently, the Code Penal of 1810, the concept of misconduct entered the criminal law system as a distinct group of criminal offences. The trichotomous (felony – misdemeanour – misconduct) and dichotomous (felony – misconduct) criminal codes were based on the classification of criminal offences upon their gravity.

A major issue in the assessment of minor crimes is therefore to clarify their relationship with other offences. It follows that they are the basis for a lighter form of liability according to criminal liability. Minor offences, as they are not homogeneous in nature, give rise to further problem. That is, there is a significant number of acts which are the consequences of breach of the law and are not simply

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forms of a crime which can no longer be assessed in criminal law.

As the institutions have evolved, these rather complex illegal behaviours have also required “reconciliation” with the principles of criminal law and the separation of powers

doctrine. As to whether administrative bodies can exercise criminal jurisdiction or impose penalties – i.e., violate the postulate of justice by the courts, arose further constitutional question.

Simply put, the “centuries-old dilemma” of the relevant legislation can be expressed in the following pair of opposites:

- misconduct is part of criminal substantive law, which is adjudicated by the courts and through administrative ambit;
- administration is excluded from the exercise of criminal power on the level of postulates.

The origin of this forced choice between the two mutually exclusive options is the administrative criminal law. Substantive legal unity and division by offences during the procedure have meaningfully led to the proliferation of theories that further qualifies the criminal acts.<sup>1</sup>

Theories of criminal law in the civil era gradually built on each other. Essentially, the concept of counter-administration already appears in the first attempts of delimitation of crime and misconduct, i.e., “violation of the law of a transient nature”, which can be assessed both as a formal breach of the law and non-criminal breach of the rules or misbehaviour.

As to the natural law conception, the criminal offence is a violation of a man’s inherent rights, whereas the misconduct is only a violation of positive law. Hence the distinction in moral content. That is to say, crimes are immoral, *mala in se* acts “prohibited by nature”, whereas misconducts are *mala prohibita* acts criminalised by man-made law. At the same time, the abstract danger as another distinguishing characteristic of counter-administration emerged with the concept of endangerment. The divisibility of criminal law was expressed by theories based on the subject matter of the law and on illegality resulted in judicial and administrative criminal law.

The theory of administrative criminal law in Hungarian jurisprudence was founded by Pál Angyal. According to him, misconduct is a misbehaviour against public administration, which is unlawful as felony. The misbehaviour against public administration is also a substantive criterion characterising the acts covered by administrative criminal law. The substantive element of criminal law carries a danger to society, but this is so slight concerning misconducts that it can be resolved by counter-administration. Counter-administration, on one hand, is the synonym of a

lesser degree of danger to society and, on the other, is also the expression of the same degree of danger as acts which obstruct the functioning of public administration.

## 2. Legislation of misconducts in the 19<sup>th</sup> century

It is known that the 19<sup>th</sup> century, which established the rule of law and created major legislation, was consistent in its application of constitutional and criminal law principles.

The first stage in the development of the institution was linked to the universal achievements and domestic attempts of codification of criminal law. The *Addendum to the Proposals of 1843* (on police misconducts under public disciplines and their punishment) is a close Annex to the draft Criminal Code on offences and punishments. The *Addendum* also took over the division of criminal law into general and special part. The provisions of the general part (scope, liability, stage, offenders, and type of punishment) have been extended with minor amendments to misconducts.

Recognising the difficulties of defining minor offences, it was clear before the codification of the time that the full range of offences and their criminal relevance was not limited to acts bordering on criminality, but also included conducts arising from administrative relationships. As to these conducts, however, it was not possible to lay down general rules and in particular to codify them and had to establish rules for smaller communities.

Irregularities of a misconduct nature (e.g., breaches of fire, water, building and health regulations; violating the rules of the law; causing danger by scuttling on streets and bridges) were listed by the *Addendum*, which behaviours could be formulated and punished partly by governmental decrees and partly by statutes of the jurisdiction. We find the forerunner of the present legal solution already in this attempt at codification: misconducts could be defined by statute, governmental decree and by ordinance.

The *Proposals of 1843* created a parallel between criminal procedure and police proceedings, in addition to the unity of offence and misconduct. The bodies that adjudicated misconducts were not acted as single judges but collegiate bodies. The police magistrate, with two members delegated by the magistrate’s office, sat in panel. The relevant sections of the Code of Criminal Procedure were to apply to the proceedings. The one-stage appeal was in-



Pál Angyal (1873–1949)<sup>2</sup>

tended to provide for by the system of redress through the courts.<sup>3</sup>

In addition to the above-mentioned criminal law proposals, our first law on misconducts is worth considering, the *Act No. 9 of 1840 on Rural Police*. This legislation was the first attempt to group together and punish endangering acts in a specific category of cases. General characteristic of these acts was that the act or omission resulted in harm. Causing damage gave rise to two forms of liability: tort liability and “enforcement” liability. Beyond the compensation for costs, the perpetrator of an act of culpable negligence was liable to double damages, i.e., to fine, and in case of repeated culpable negligence, to imprisonment. These penalties were determined by the nature and gravity of the offence and the degree of responsibility. The offences were adjudicated in summary proceedings.

The Act No. 9 of 1840 and the proposals for Addendum were regarded as the source of minor endangering acts, offered solutions from which, as we shall see, subsequent codification could not entirely free itself.

### 3. The jubilee classic Code of Misconducts (Act No. 40 of 1879)

The second stage in the development of the law of misconducts was opened by the codification of 1878/79. Similarly to the majority of foreign criminal law of the time, a remnant of classical criminal law dogmatics, the *Codex Csemegi* is based on the principle of the threefold division of offences. However, it did not place the punishable offences in a single code. The offences (felony – misdemeanour) were separated from the already heterogeneous and differentiated conduct: misconducts were placed in a separate code. The consistency of the threefold division was reflected in the structural unity of the two codes. Both the Criminal Code and the Code of Misconducts were divided into general and special parts. Chapters containing the general part were essentially adequate with the differences stipulated in the Code of Misconducts.

The *Codex Csemegi* as the Hungarian Criminal Code – Code of Misconducts together formally created the substantive legal unity: misconduct was introduced as a criminal institution. However, the *Codex* also legalised the inclusion of part of the infringement of an administrative norm within the concept of misconduct. It is true that the right of administrative authorities to punish acts against administration was recognised only within the narrow limits set by law. Administrative criminal law existed latently within misconduct, but only embryonically. Hence the origin of the consequence of the later separation and the desire to create *Verwaltungsstrafrecht* separated from the judicial criminal law: *Justizstrafrecht*.<sup>4</sup>

It is also known that the general part of the Code of Misconducts provides for two sets of rules. One part deals with the statutory sources of law and the other part with the relationship to criminal law. A framework offence is only a violation of an official provision which is desig-

nated as to the subject matter and direction by fixing a penalty. The elements of the activity are embodied in other rules. The other alternative is that neither the object nor the relationship is specified and the government or the legal authority enacts a penal rule for them.

Accordingly, this is our first thesis:

*The unity of the law of misconduct, while unified according to gravity, can only be understood in terms of the consistency of the law and the multi-stage penal regulations.*

The relationship with criminal law is further characterised by the fact that the general part of the Criminal Code provides the unity, while the Code of Misconducts sets out the differences. Asserting the principle of imputability, the Code of Misconducts basically established liability for negligent conduct.

Explanatory memorandum to Act No. 37 of 1880 on the enactment of the Hungarian Criminal Code regulated the jurisdiction for misconducts. The division of jurisdiction was not proportional between administrative criminal authorities and district courts. It granted preponderance to the administrative authorities (80:44 in favour of the administration). However, activities in the five chapters of the special part provided for judicial proceedings only, while the other five chapters allowed parallel jurisdiction.

Our second thesis stems from the above:

*The comparison of the specific part of the Criminal Code – Code of Misconducts makes it clear that the unification by weight and the corresponding division of powers was Janus-faced. In the former, heterogeneity pulled through the unity, and in the latter inconsistency pulled through the guarantee requirements. To sum up, the codification in the end of the last century has not been able to overcome the contradictory situation. It was, however, consistent in one respect: it sought to resolve differentiation by means of a general regulatory technique.<sup>5</sup>*

### 4. The final chapter in the institutional history of misconduct

The regulatory practice bound to legal principles of the 19<sup>th</sup> century transformed by the mid-20<sup>th</sup> century. Since the objectives of legal policy can be captured in different dogmatic concepts, it is well known that the relationship between the content and form of law is not functional. Thus, the general part of the Code of Misconducts remained in force until 1 January 1951, while the *Criminal Police Rules* remained in force until 15 July 1952. The evolution of criminal justice became a two-way street. With narrowing of the division of offences according to gravity, Act No. 2 of 1950 on the general part of the

Criminal Code revived the dichotomous system (felony – misconduct). A particular character of the assessment of misconducts was that it bore a same danger to society as felonies. The distinction appeared only in the legal consequence.

Act No. 2 of 1950 on the general part of the Criminal Code did not, however, cover the special part of the law relating misconducts. This was laid down with general scope in decree-law No. 35 of 1951 on *Rules of Procedure for Misconducts*. This meant that decisive role in determining misconducts and felonies were the authorities with jurisdiction, rather than the law.

It was inevitable to simplify the forum system by reason of the diversity of the bodies adjudicating misconducts, the duplication of procedures [*Code of Criminal Procedure* (Act No. 33 of 1896); *General Part of the Criminal Code* (Act No. 2 of 1950)] and the merging of procedural functions (the investigative body also adjudicates). This was partly fulfilled by Decree-Law No. 16 of 1953. It abolished the power of the police to adjudicate misconducts and the general power was shared by the local council's executive committee and the court.

The abolition of the division of offences according to gravity and the creation of substantive criminal law based on a uniform concept of punishment was set forth in decree-law No. 17 of 1955 which resulted the end of the so-called “traditional era” of legislation. The decree-law classified some of the offences under the heading of felonies, while the greater part of them were put under the generic term of misdemeanours. It confirmed the thesis in the literature of the time that misdemeanour is not an indispensable criminal category. In short, its main characteristics were the unification of the forum system, the distancing from criminal law and the creation of a construction based on administrative responsibility, which also eliminated the sanction of restriction of liberty.

## 5. The concepts of the law of misdemeanours in the two Infringement Acts (1968, 1999)

Following the creation of infringements as a new legal institution by the decree-law, the codification body of the Judicial Council established under the Ministry of Justice, examined in a wide-ranging professional debate, subsequently with the assistance of a team of professors, the theoretical variants and the organisational and procedural issues.<sup>6</sup> The recently published study, presenting the history of criminal law by archival sources of crucial value, is a useful “guide” to the professional plans for almost a decade. Such preparations marked the beginning of the “new age” of the infringements by acts violating or endangering state administration, which, in the first Infringement Act (Act No. 1 of 1968 on infringements), were accompanied by acts against the rules of social coexistence, making it clear that the new institution remained “Janus-faced”.

Professor Lajos Szatmári, the eminent administrative law expert, in his authoritative monograph on administrative doctrine, expresses this very eloquently:

*“[...] the unlawful conduct related to activities of the state administration bodies is not opposed by conducts violating the rules of social coexistence, but by the so-called petty criminal law infringements.”<sup>7</sup>*

In his excellent monograph, Professor Tibor Madarász, also a prominent representative on the subject, reinforces this thesis:

*“[...] offences belonging to petty criminal law, the ‘petty offences’ (criminal infringements), fall outside the scope of the concept of sanctions in administrative law [...]. Criminal infringements are ambiguous in their legal classification. These are also administrative sanctions under substantive law and under the ‘official’ legal classification. On a theoretical level, however, this position cannot be accepted since the legal classification of ‘petty offences’ is so criminal in nature that the links between the legal regime of these offences and the substantive or procedural criminal law are much stronger than those between them and administrative law. So much so that the literature seems almost united in calling for a change in the present situation.”<sup>8</sup>*

It is to be mentioned briefly that our first Infringement Act, which denied criminal correlation, underwent a specific transformation. One trend was decriminalisation and the other was the significant extension of the classical personal liability by the inclusion of the liability of legal persons. Moreover, a third feature was the gradual development of sectoral professional supervision alongside legal and financial supervision. The alternative option of dual liability has in itself become a conflict-generating factor. The different nature of the professional supervisors' powers of action was even more striking. For certain types of supervision, the related public administrative body also functioned as an authority dealing with infringements, while it had only the right of initiative for others.

The second code, Act No. 69 of 1999, which was adopted by the Constitutional Court in its decision No. 63/1997 (XII. 12.), made the possibility of judicial review compulsory, thus reviving the solution of the Code of Misconducts model, was a further significant change in the codification timeframe.<sup>9</sup>

## 6. The third Infringement Act (2012) The transformation of infringements into quasi misconducts

According to Professor Norbert Kis, an inescapable theoretician of infringement law and administrative sanctions, along with the failures of the transformations, the attempt to create the institution of infringement started in 1955

and ended in 2012. Pursuant to his expressive value judgment, the third Infringement Act “triggered a landslide in the law of administrative repression”. It took several decades for legal policy to draw the conclusions from the theorems formulated as early as the 1980s. In other words, administrative protection was retreated from this time by administrative law into its own taxonomic and theoretical domain.

To put it simply, the concept of unitary administrative protection has failed, since administrative sanctions other than infringement law have increasingly come to dominate.<sup>10</sup>

The repressive instruments of administrative protection were diverted from the codification of infringements and a different system of sanctions for each sector was created by the legislation in the administrative sector. Professor Marianna Nagy also described this process in an analytical and dogmatically thorough manner, in her excellent monograph.<sup>11</sup> Norbert Kis is perhaps the most “profound” in his assessment of the relevant case-law of the past decade in his habilitation monography, *Problems of the criminal power of public administration: limits to the effectiveness of law enforcement*. He thus identifies two effects of this controversial development. On the one hand, he stresses the seriousness and repression of the infringement law, and condemns, in particular, the expansion of the sectoral administrative sanction system. Noting several, but focusing on just two of the reasons for this, *hic et nunc*. The first is that the theory of small-scale

criminal law has not allowed for differentiation of the system of sanctions in the law of infringements in relation to criminal law, while sectoral legislation has gone beyond this and transcended theoretical dilemmas. On the other hand, the author states that “sectoral sanctions prevail in conditionalities which are more effective and dissuasive than those of the infringement law and this is explained by the lack of a constitutional framework”.

Furthermore, the new Infringement Act has triggered the criminalisation test of constitutional criminal law, also emphasized in his dogmatic deduction. In other words, when examining whether a conduct has been declared as infringement, the requirements of constitutional criminal law apply. The Constitutional Court correctly requires a material endangerment of the legal object in order a conduct to be declared an infringement. For the first time in its history, extending the principles of criminal legality to penalties outside of infringement law by the Constitutional Court of Hungary, was a real paradigm shift.<sup>12</sup>

The conclusion is a witty one, since it provides a framework for the jurisprudential lessons to be drawn from the 140-year timeframe from misconduct to misconduct:

*We have reached a constitutional revelation that recognizes that administrative criminal power is separated from criminal law only by legal policy considerations with the transformation of infringements into quasi-misconducts.*<sup>13</sup>

## Notes and references

<sup>1</sup> MÁTHÉ, Gábor (ed.): *Közigazgatási büntetőjog [Administrative criminal law]*. Budapest, 1988. Tankönyvkiadó, 155–165.

<sup>2</sup> [www.ogyk.hu/uploads/ogyk/tartalom/portre-mnn.jpg](http://www.ogyk.hu/uploads/ogyk/tartalom/portre-mnn.jpg).

<sup>3</sup> *Az 1843-ik évi Magyar Büntető-törvénykönyvi javaslat. Toldalék [The proposal of the Hungarian Criminal Code of 1843. Addendum]*. 1865. 136–143.

<sup>4</sup> MÁTHÉ, Gábor: Bagatell deliktumok? [Petty crimes?]. In MENYHÁRD, Attila – VARGA, István (eds.): *350 éves az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Kara [350 years of the Faculty of Law of the Eötvös Loránd University]*. Budapest, 2018. ELTE Eötvös Kiadó, 998–1006.

<sup>5</sup> KIRÁLY, Tibor: Kihágások a magyar jogban [Misconducts in the Hungarian Law]. In MÓRA, Mihály (ed.): *Tanulmányok az állam és a jog kérdései köréből [Studies on the State and Law]*. Budapest, 1953. Jogi és Közgazdasági Könyvkiadó, 87–128.

<sup>6</sup> Magyar Nemzeti Levéltár, Igazságügyminisztérium, Igazságügyi Tanács [Hungarian National Archives, Ministry of Justice, Judicial Council. Documents]. MÁTHÉ 2018.

<sup>7</sup> SZATMÁRI, Lajos: *A bírság a magyar államigazgatásban. Kandidátusi értekezés [The fine in the Hungarian public administration. Candidate thesis]*. Budapest, 1990. ELTE Állam- és Jogtudományi Kar, 19–30.

<sup>8</sup> MADARÁSZ, Tibor: *Az államigazgatási jogi szankció fogalma és fajtái [The concept and types of administrative sanctions]*. Budapest,

1989. ELTE ÁJK; See also ÁRVA, Zsuzsanna: *A közigazgatás quasi bíraskodási tevékenysége [The quasi-judicial activity of public administration]*. Debrecen, 2014. Debreceni Egyetemi Kiadó.

<sup>9</sup> MÁTHÉ, Gábor: Csatlakozási fenntartás – Szabálysértési jogalkotási dilemma [Reservation of accession - Infringement legislative dilemma]. In LAPSÁNSZKY, András – PATYI, András (eds.): *Ünnepi kötet Verebéli Imre 70. születésnapjára. Rendszerváltás, demokrácia és államreform az elmúlt 25 évben [A volume in honor of the 70<sup>th</sup> birthday of Imre Verebéli. Regime change, democracy, and state reform in the last 25 years]*. Budapest, 2014. Akadémiai Kiadó, 383–394.

<sup>10</sup> KIS, Norbert: *A közigazgatás büntetőhatalmának problematikája: a jogérvényesítés hatékonyságának korlátai. Kézirat [Problems of the criminal power of public administration: limits to the effectiveness of law enforcement. Manuscript]* 2015.

<sup>11</sup> NAGY, Marianna: *A közigazgatási szankciók elmélete [The theory of administrative sanctions]*. Budapest, 2002.

<sup>12</sup> KIS, Norbert: *Az állami jogérvényesítés és a közigazgatási büntetés dilemmái [The dilemmas of state enforcement and administrative punishment]*. Budapest, 2018. Dialóg Campus Kiadó, 34–40.

<sup>13</sup> This article is published as part of the research project of the MTA–ELTE Legal History Research Group of the Hungarian Academy of Sciences at the Department of Hungarian State and Legal History of Eötvös Loránd University, Budapest. The Research Group is a member of the Eötvös Loránd Research Network (ELKH).



Megyeri-Pálffy, Zoltán

# The Architectural Background of the Hungarian Justice System in the Age of the Austro–Hungarian Monarchy

## 1. Introduction

When speaking of the judicial organisation in its physical reality, two factors shall be mentioned. Firstly, the human resources, particularly the judges. Secondly, the whole of material conditions, of which the court buildings are of utter relevance. This study deals with the latter element: the architectural background of the Hungarian court system in the Austro–Hungarian Monarchy.

When dealing with both legal and architectural issues, generally speaking, the worlds of law and architecture are most clearly interlinked in courthouses. The court as a building comprises three sets of rules, according to Werner Gephart: the regulatory system of the court as an organisation, its impact on the technical rules of construction and many abstract rules that define the character of a legal system.<sup>1</sup> A court building, in fact, is a specific projection of legal norms into physical reality. Therefore, in this context, the most fundamental question is: *What is necessary for the construction of a courthouse?*

The answer can be summarised in a few steps that take us from organisational reforms to an accomplished construction of a courthouse. The definition of the task in this process is the starting point, which, in this case, is to build up the judicial organisation. This is closely linked to the judicial reforms carried out throughout Europe in the second half of the 19<sup>th</sup> century.

### 1. 1. Reform of the justice system

One of the most important tasks of the State after the Compromise of 1867 was the modernisation of the judiciary, which the government soon set about. The process took several decades, the stages of which are reflected in procedural and organisational laws. We are aware that after the Compromise, the Act No. 54 of 1868,<sup>2</sup> which aimed at reforming civil litigation, also affected the justice system and, subsequently, a decisive step was taken by Act No. 4 of 1869, which separated administrative and judicial activities. From that point on, these two activities went their separate ways, which translated into the language of architecture, led to the appearance in

Hungary in the following decades of two different types of public buildings with different functions: court and administrative buildings.<sup>3</sup>

The first organisational laws, which basically determined the later Hungarian court system were passed after 1869, as the courts of first instance were established by the Acts No. 31 and 32 of 1871. The organisational reforms of the following decades (1876, 1881, 1890,<sup>4</sup> 1897, 1912) created the judicial organisation of the dualist era, whose so-called *ordinary courts* are relevant to the present topic. These were courts of general jurisdiction, operating under a hierarchical system, which had fixed location and functioned permanently.<sup>5</sup> These two characteristics did not apply only to their operation, but also their physical existence, which required buildings.

When the state judiciary was set up, new court houses separated from the administrative buildings, as a matter of course, could not be built immediately. It is no coincidence, that the *provisional measures* of the Act No. 31 of 1871 enshrined the question of location and ordered the authorities and municipalities to make their premises available for the courts<sup>6</sup> free of charge. This situation, however, was not satisfactory even then, and the state's financial resources, in addition to the inadequacy of the organisation, preserved the situation for many years in which the state courts had to further operate in municipal-administrative buildings.<sup>7</sup> It was clear that new buildings would have to be erected for the new courts.

### 1. 2. The relationship between organisation and function

Modernisation therefore resulted in a new court organisational system, which also needed physical space provided by a suitable building in these decades. The definition of function is always a primary condition when it comes to the design of a building. The structure of the judicial organisation is one aspect of the functionality of a court building.

The ordinary court organisation of the Dualism had four instances (the Royal District Courts, the Royal Regional Courts, the Royal Courts of Appeal, and the Royal Curia), to each of which a building had to be assigned. This, in principle, would have meant four types of courthouses, i.e., buildings for the district courts, for the regional courts, for the regional courts of appeal and a building for the Curia. Construction projects of the subsequent period implemented these types of buildings, but expediency required each forum to be housed in the same building, thus various activities of the judiciary were provided for by multifunctional facilities.

However, it is not only the design of a courthouse that determines its appearance, but also the procedural law. This factor has the greatest and most general impact on the design of a building. Thus, a court building has specific space requirements.



### 1. 3. The specific space requirements of adjudication

The evolution of the space requirements of legislation is closely linked to the codification of procedural law. This is part of the changes of the 19<sup>th</sup> century leaving a fundamental mark on legal culture since social changes and the emancipation of the bourgeoisie went hand in hand with economic development. Individual liberty became a central political concept and a defining requirement of the constitutional state. This political change and movement has strongly affected the judiciary. The written and secret proceedings were replaced by the independence of judges, the principle of verbalism, the principle of publicity, and the participation of lay people in criminal proceedings. A change in the judicial architecture was also brought by these changes. Oral and public proceedings required a large space,<sup>8</sup> while secret and written proceedings were confined to a small room.

The principles of verbalism, immediacy, and publicity, which were implemented in French law with the Civil Procedure Code of 1806,<sup>9</sup> shaped the court buildings, as these principles required spatial solutions that were unnecessary or even unthought of in the case of earlier written proceedings for many years in the 19<sup>th</sup> century. Hence the experimental period in the development of court buildings to meet the needs of procedural law. Such an exciting period took place, for example, in the Rhineland, where French procedural law prevailed as a result of the Napoleonic invasion and court buildings had to be adapted and designed accordingly.

Konrad Schall, in his treatise, described this period of experimentation, which lasted several years, through the example of the Grand Duchy of Baden.<sup>10</sup> It shows that Baden was one of the first German states to introduce the principle of publicity by its reform of procedural law in 1831–1832, and thus was confronted with the architectural space requirements this entailed. One of the most eye-catching of these was the need to change the building of the higher courts. The building of the *Hofgericht* in Freiburg and its upstairs courtroom were not suitable for public use due to their small size and location, thus the court looked for a new, larger room in the adjoining wing in 1832. Subsequently, the public courtroom provided space for both trials at first instance and appeals.<sup>11</sup>

However, these principles have changed the life not only of the higher, but also of the lower courts. The task had to be tackled at this level too, since suitable buildings were scarce. However, this was difficult, because, while the Baden Building Authority had experience in the design of administrative buildings, it did not have any for the courts. Thus, there was complete uncertainty as to the layout of the buildings to be designed. This was well reflected by a series of questions sent by the Upper Rhineland district government to the Ministry of Justice asking about the space requirements of defendants, witnesses, lawyers, and the audience, and whether there should be separate rooms provided for persons in proceedings near the courtroom. The size of the prison cells was also in

question in which the investigating judge could conduct his proceedings. The response of the ministry showed a lack of experience rather than guidance, referring to the French solution only in regard of the court rooms.<sup>12</sup> The Architecture Office drew up a model plan based on the French model<sup>13</sup> for the design and conversion of the courts in Baden in the following years.

However, it was not only the principle of immediacy and publicity that had influence on the court buildings, but also the emergence of lay judges. This caused a new conundrum also in Baden, after the introduction of sit-in judges in 1864, which required even larger courtrooms. This was met by architectural developments, so the view became widespread that “internal functions should be reflected externally as in the 1850s, by which the independence of the courts is emphasised, their character being different from that of administrative buildings”.<sup>14</sup> The place of first-instance lay judging was the courtroom of the sit-in judges, as the most important room in the courthouse was placed in the central axis of the building, in the central rizalit, as a result of the judicial reform. In addition, the rustication<sup>15</sup> on the ground floor symbolised the foundation of the building also as the new judicial law as the trusted basis for the Baden legislation.<sup>16</sup>

## 2. Developments in Hungary

Codification in Hungary progressed slowly and started decades later in contrast to the development of the Baden and other (German) states, and this, together with the lack of material funds, also hindered the appearance of court buildings that conformed to modern procedural principles. It is also important, however, that this relative backwardness has allowed Hungary to use both modern procedural law and the type of courthouse that serves it as a ready model. The actual establishment of the ready-made model, especially in the field of architecture, occurred in the third or fourth quarter of the century, when the state built a multitude of courthouses across the country in the space of a few years, laying the foundations for the court building stock that is still in operation today.

This *Hungarian model* has often turned towards German solutions, because of our historical connections both in codification and architecture. An architectural scheme adapted to modern procedural law had already been developed in Germany, by the time the building of courthouses was taking off in Hungary in the 1880s and 1890s. In this scheme, the way in which procedural needs could be met by a court building has already been well established. This is well illustrated by architectural textbooks treating courthouses as a separate type of building.<sup>17</sup>

Although the Government’s intentions for modernisation after the Compromise also affected higher education in Hungary, the general attention of our architects, in addition to Austrian developments, turned to German architecture, which was also confirmed by the fact that they learned the basics of the profession not only at the

academy in Vienna but also in Berlin in this period. For example, the legal status of the Joseph Polytechnic, which had been in operation since 1856, changed in the course of this process, and as from 1871, among other things,<sup>18</sup> it provided a framework for the training of architects under the name of Joseph University of Technology. Nevertheless, it was common for architecture students to complete their studies abroad until the turn of the century. Hungarian architecture students were mainly to be found at the Academy of Architecture (*Bauakademie*) in Berlin and the Academy of Fine Arts (*Akademie der Schönen Künste*) in Vienna.

In addition to education, trade press<sup>19</sup> has also made a significant contribution to the culture of our architects. “The *Allgemeine Bauzeitung* in Vienna has been an authoritative source already from 1836 in Central Europe, which was followed by many similar publications in the centres of the German-speaking world during the upcoming decades.”<sup>20</sup> Consequently, it was obvious that the German-speaking area provided the model for the construction of the judiciary in Hungary. We could draw from these models to build the Hungarian district courts, the regional courts, and the higher courts.

### 3. Hungarian courthouses in general

The 1880s marked the beginning of the process that resulted in the establishment of an independent court building in Hungary, i.e., we could no longer talk about judicial bodies operating under the same roof as administrative bodies. Courthouses were firstly built in places where regional courts seated. As the result of the practical approach these also functioned as home for district courts, land registry offices and even prison service institutions. This meant that complex buildings were erected, typically known as palaces of justice or judicial palaces. The complexity arose from the housing of several functions under one roof, and the name ‘palace’ was earned for the size and architectural appearance of these buildings.

#### 3. 1. Palaces of justice

Since function is always a determining factor in the construction of a building, the design of a judicial building depends to a large extent on both the structure of the organisation and the nature of the litigation.<sup>21</sup> As already mentioned, palaces of justice were multifunctional buildings because of their multiple role. Moreover, these complex buildings also met the requirements of fundamental principles of the European development, such as verbalism, publicity, directness, independence of judges<sup>22</sup> and lay participation in (criminal) proceedings. Hungarian procedural law can also be described with all these characteristics, which changes also stimulated the Hungarian judicial architecture, even before the concrete results of codification.

The space requirements of the palaces of justice were made specific by the diversity of tasks and considerations.

A palace of justice, arising from the complexity of its functions, included both lower and appellate courts, i.e., the district and the regional court. The prosecution offices were also organised alongside the courts together with the prison service<sup>23</sup> and the land registry authorities, which all operated in the same building. These were located within the building along practical reasons, considering the specificities of the procedure and operation, thus the ground floor was usually occupied by the bodies with the highest client traffic and wide corridors also used for waiting. These included the district court, where most cases were brought, and the land registry. The investigating judge’s offices were also usually located in the same area.

The regional courts’ offices, the presidency, the groups of prosecution offices and the auxiliary offices were typically located on the floors. Due to the fact that cases with wider publicity were tried there, the jury room, where criminal trials and jury trials were held, has always been a prominent place of the palaces of justice. It was usually accessed by a grand staircase leading up from the atrium connected to the main entrance. The hall was the most representative room of the building.

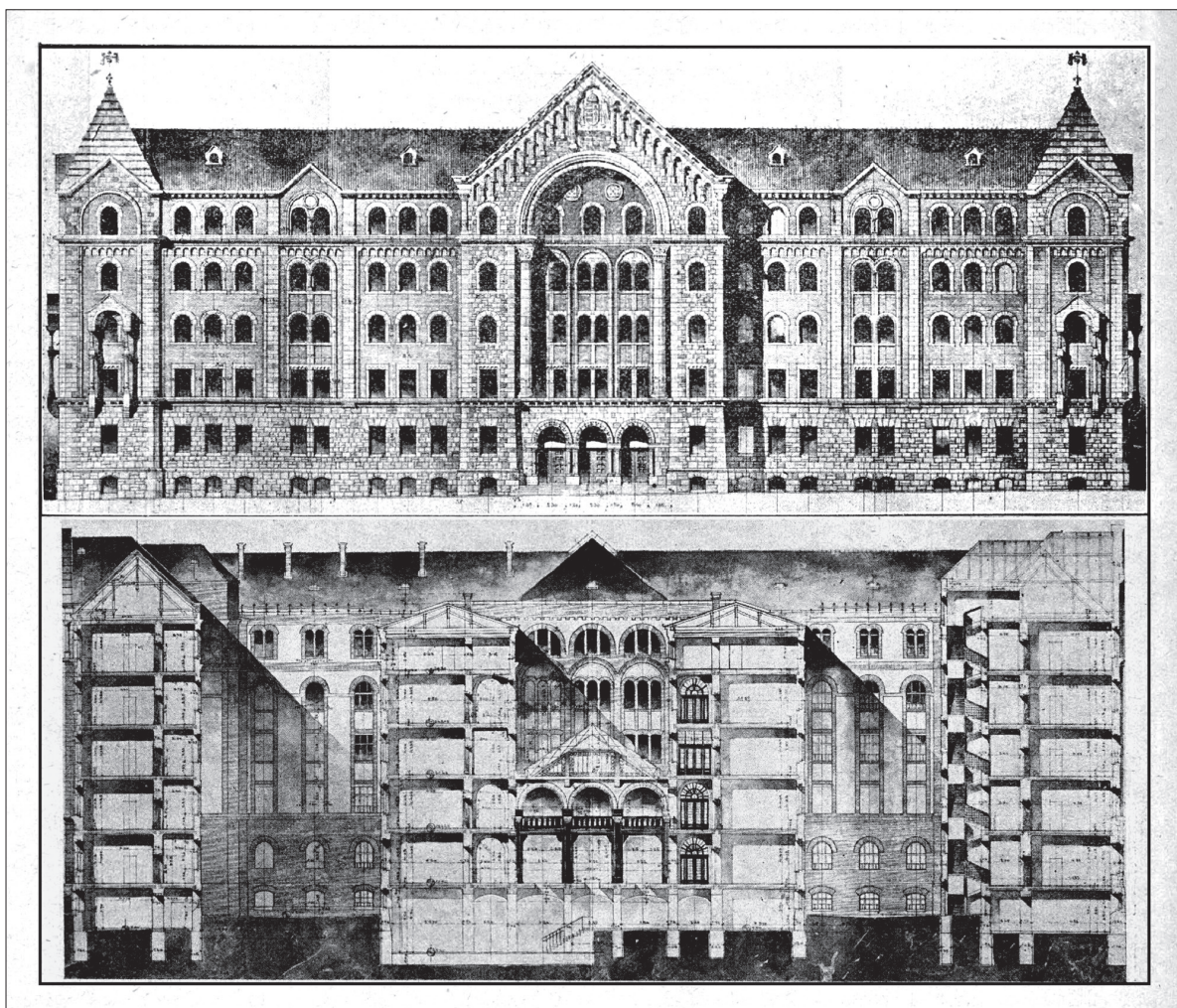
Some of the jury rooms are a sort of print of legal history of our palaces of justice since jury trials were an integral part of the procedural system when these rooms were built. A panel of three judges and a jury of twelve lay members required additional rooms. For the judicial panel and the jury, separate retire rooms were provided next to the jury room, however participants, such as lawyers, accusers, and defendants, as well as witnesses, were also accommodated in separate rooms reserved for them during the trial.

The penitentiary functions as the last stage of the criminal justice process were hidden from view, as the prisons were typically built behind the main wing of the regional courthouses, in the rear courtyard wing, with a simple exterior largely for functionality. Detention houses were usually built with more stories than the court wings and included both private and shared cells with associated service rooms. The prisoner’s yard was marked out on the rear part of the site behind the detention wing, preferably isolated from the public by both the courthouse and the street.<sup>24</sup>

#### 3. 2. The architecture of the palaces of justice

Due to their several functions in the civilian era, the palaces of justice required a large building with units under one roof yet separate from each other. The centralisation made all the institutions accessible to the public seeking justice, and the construction costs were more affordable. This was a matter of practicality, however, the need for public and judicial representation made the house a palace.

Such a palace was a revival of the notion that architecture is not only functional, but also a carrier of meaning. Therefore, the palace of justice itself had to express the independence of the civil justice system, the power of the judiciary and the power of law.<sup>26</sup> The building showed all this in its design, in its symbolism and in its floor plan that could be read by the public.



*The Royal Central District Court of Budapest<sup>25</sup>*

As in case of other buildings of the period, the architectural appearance of these palaces, as well as the architecture of their facades, reflect different stylistic trends of historicism. The buildings of the judiciary are mainly characterised by neo-Renaissance and neo-Baroque styles, and as from the 1910s the Hungarian Art Nouveau was also introduced. As to architecture, innovation always lagged behind the more traditional forms and conservative approach, which can be understood by the fact that these palaces had to be authoritative and serious rather than fashionable, since the power of the state to administer justice was better expressed by historical and traditional forms, according to the zeitgeist.

The architectural tools of historicism were appropriate to serve this representative intention, thus the articulation of the facades, the plinth zones often accentuated by quadding, the more ornated floor opening frames, the so-called great colonnade of pilasters spanning several stories, the prominent coronation parapets, and the risalites repeatedly accentuated by spectacular domes and mansards. These elements made these buildings monumental. Judicial buildings have fundamentally defined the urban landscape with their elegance and significance thus achieved, in line with the trend towards the important role of newly erected public

buildings in the development of European cities, including Hungary. Since buildings associated with different social factors (ruler, state, municipality, etc.) symbolising both the builder and the function,<sup>27</sup> representativeness was particularly important in the Central European region. This significance was also due to the fact that these multifunctional buildings were often built in the main squares or in prominent locations of settlements, or where good transport facilities were available. This followed with a purpose to facilitate access to justice buildings for the public seeking justice. It was not only the representative palace character that facilitated the orientation, but also inscriptions (e.g., Law House, Royal Regional Court) or plastic display of the state emblem in a prominent place on the facade or, occasionally, the statue of Justitia,<sup>28</sup> the symbol of the goddess of justice.

### 3. 3. *The district courts*

The generalities, i.e., the characteristics of the palaces of justice outlined so far are specific to the complexes built on the sites of the regional and district courts. However, in smaller municipalities “only” district courts were built in

accordance with territorial jurisdiction. These smaller judicial buildings were also complex in their own way, as they included both a land registry office and a detention house in many cases. The construction of these buildings took place rather after the turn of the century, after most of the large palaces of justice had been built. These smaller buildings were of similar importance at the district courts' seats as were the palaces of justice in the large cities: they became an important public building for the settlements and were representatives of the state justice system. Since a district court might have had only one or a few district judges, plus support staff, its relevance was commensurate with the size of the organizational unit.

### 3. 4. Judicial buildings and their architects

The architect and the architectural design are essential elements in the construction of a building, in addition to the definition of its purpose. The sort of the latter is primarily a reflection of the qualities of the designer. Public constructions always offer architects a great opportunity to showcase their talents. To carry out the work, depending on the task and the intention, the State, as the client, either selects the architect through a call for tenders or gives him direct commissions. While the former is always a good way of mobilising the architectural profession at large, launching professional debates and presenting individuals, the latter is usually more definitive, it is about specific people, specific goals, specific tasks. There are several examples of both when it comes to judicial buildings. Prior to the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries, court buildings were designed by the Ministry of Justice by direct commissions, and subsequently the system of tendering for this type of building was introduced.<sup>29</sup>

Since the design of judicial buildings required specific architectural knowledge, a pool of architects specialized

in court buildings could be created. One of the most prolific of these was Gyula Wágner (1851–1937), who became known for his prison service<sup>30</sup> and regional court buildings.<sup>31</sup> Direct commissions from the Ministry of Justice enabled Wágner to become the Ministry's "in-house architect".

Similarly, Ferenc Jablonszky (1864–1945)<sup>32</sup> also played a prominent role, who mainly designed district courts in the period up to the First World War. The court buildings of Sándor Aigner (1857–1912),<sup>33</sup> István Kiss (1857–1902) and Pál Tóásó (1870–1927) are also significant from this period, and Alajos Hauszmann (1847–1926) also made his name among judicial architects<sup>34</sup> with the Royal Regional Court of Budapest and the Royal Curia.<sup>35</sup>

### 4. Epilogue

The stock of court buildings in Hungary built in the civil period are an integral part of the wider geographical context of judicial buildings in Central Europe, reflecting the period of construction in terms of both judicial organisation and architectural stylistic changes. The judicial forums of first instance, the district courts and the regional courts appeared during the Dualism, thanks to the organisational reform of the Kingdom of Hungary, which, together with the Royal Courts of Appeal and the Royal Curia, which had been established earlier, formed the backbone of the Hungarian judicial system of the time.

These courts were successively given independent buildings from the 1880s onwards, so that large cities were enriched with palaces of justice, while smaller court seats were enriched with a district court building. Preserving their original function and recalling the specificities of an earlier period, in most places, these buildings still serve the administration of justice today.<sup>36</sup>

### Notes and references

<sup>1</sup> GEPHART, Werner: Versteinerte Rechtskultur. Zur kultursoziologischen Analyse von Gerichtsbauten. In MOHNHAUPT, Heinz – SIMON, Dieter (Hrsg.): *Vorträge zur Justizforschung. Geschichte und Theorie*. Bd. 1. Frankfurt am Main, 1992. Vittorio Klostermann, 411.

<sup>2</sup> Cf. MÁTHÉ, Gábor: *A magyar burzsoá igazságszolgáltatási rendszer kialakulása 1867–1875 [The Development of the Hungarian Bourgeois Judicial System 1867–1875]*. Budapest, 1982. Akadémiai Kiadó, 26–31.; BÓNIS, György – DEGRÉ, Alajos – VARGA, Endre: *A magyar bírósági szervezet és perjog története [History of the Hungarian Court System and Trial Law]*. Zalaegerszeg, 1996. Zala Megyei Bíróság–Magyar Jogász Egylet Zala Megyei Szervezete, 213.; STIPTA, István: *A magyar bírósági rendszer története [History of the Hungarian Court System]*. Debrecen, 1998. Multiplex Media–Debrecen University Press, 121.

<sup>3</sup> Cf. MEGYERI-PÁLFFI, Zoltán: Vármegyeházák a történeti Magyarországon az 1870-es közigazgatási reform után [County Halls in historical Hungary after the administrative reform of 1870]. In RAJNAI, Zoltán – FREGAN, Beatrix – MAROSNÉ KUNA, Zsuzsanna – OZSVÁTH, Judit (eds.): *Tanulmánykötet a 6. BáthoryBrassai nemzetközi konferencia előadásaiából [A study of papers presented at the 6<sup>th</sup> Báthory-*

*Brassai International Conference]*. Vol. 12. Budapest, 2015. Óbudai Egyetem Biztonságtudományi Doktori Iskola, 446–461.

<sup>4</sup> 1890 is a key year for organisational reforms, as it was the year when the system of the courts was reformed. Cf. ANTAL, Tamás: *Törvénykezési reformok Magyarországon (1890–1900). Ítéltáblák, bírói jogviszony, esküdtszék [Law Reforms in Hungary (1890–1900). Courts of Appeal, Judicial Status, Jury]*. Szeged, 2006. Csongrád Megyei Levéltár, 21–22.; Idem: A Debreceni Ítéltábla rövid története [Brief History of the Debrecen Court of Appeal]. In SZILÁGYINÉ KARSAI, Andrea (ed.): *10 éves a Debreceni Ítéltábla [10 years of the Debrecen Court of Appeal]*. Debrecen, 2015. Debreceni Ítéltábla, 14–26; BALOGH, Judit: Város és bíraskodás [City and Jurisdiction]. In SZILÁGYINÉ KARSAI, Andrea (ed.): *Legyen ez az épület mindenkor az igazság temploma [Let this building be a temple of justice at all times]*. Debrecen, 2016. Debreceni Ítéltábla, 16.

<sup>5</sup> Cf. STIPTA 1998. 125.

<sup>6</sup> § 32 and 34 of the Act No. 31 of 1871.

<sup>7</sup> Such transience characterised this period in Debrecen as well. Cf. PAPP, József: *Törvénykezési helyszínek Debrecenben a 20. századig [Places of jurisdiction in Debrecen until the 20<sup>th</sup> century]*. In

- MEGYERI-PÁLFFI, Zoltán (ed.): *Jogszolgáltatás Debrecenben [Justice in Debrecen]*. Debrecen, 2015. Debreceni Törvényszék, 29–39.
- <sup>8</sup> KLEMMER, Klemens – WASSERMANN, Rudolf – WESSEL, Thomas Michael: *Deutsche Gerichtsgebäude. Von der Dorflinde über den Justizpalast zum Haus des Rechts*. München, 1993, Verlag C. H. Beck, 28.
- <sup>9</sup> Cf. KENGYEL, Miklós: *A bírói hatalom és a felek rendelkezési joga a polgári perben [Judicial power and the right of the parties to dispose of their property in civil proceedings]*. Budapest, 2003. Osiris Kiadó, 30–39.
- <sup>10</sup> SCHALL, Konrad: *Gerichtsbauwesen 1803–1918 im Spiegel von Gerichtsverfassung und Prozeßordnungen – dargestellt am Beispiel Badens*. Inaugural dissertation, Schwäbisch Hall, 1994.
- <sup>11</sup> Ibid. 52.
- <sup>12</sup> Ibid. 65.
- <sup>13</sup> Ibid. 68–69.
- <sup>14</sup> Ibid. 125.
- <sup>15</sup> Rustic is a rough stone masonry made of roughly or artificially roughened nap-surface stones. In addition to symbolism, it is to be noted that rustication and squaring was an important architectural method of historical styles that were widespread in the period, including the Neo-Renaissance.
- <sup>16</sup> SCHALL 1994. 127.
- <sup>17</sup> Cf. DURM, Josef – ENDE, Hermann – SCHMITT, Eduard – WAGNER, Heinrich (eds.): *Handbuch der Architektur 7. Halbband, Heft 1: Gebäude für Verwaltung, Rechtspflege und Gesetzgebung; Militärbauten. Stadt- und Rathäuser. Gebäude für Ministerien, Botschaften und Gesandtschaften. Geschäftshäuser für staatliche Provinz-, Kreis- und Ortsbehörden. Geschäftshäuser für sonstige öffentlichen u. privaten Verwaltungen. Leichenschauhäuser. Gerichtshäuser, Straf- und Besserungs-Anstalten. Parlamentshäuser und Ständehäuser. Gebäude für militärische Zwecke*. Darmstadt, 1887. Arnold Bergsträsser; KLASSEN, Ludwig (ed.): *Grundrissvorbilder von Gebäuden aller Art. 13. Gebäude für Justizzwecke*. Leipzig, 1891. Baumgärtner's Buchhandlung.
- <sup>18</sup> Cf. SISA, József: A József Műegyetem és az állami Felsőipariszkola [The József University of Technology and the State School of Higher Industry]. In Idem (ed.): *A magyar művészet a 19. században. Építészet és iparművészet [Hungarian art in the 19th century. Architecture and applied arts]*. Budapest, 2013. MTA Bölcsészettudományi Kutatóközpont–Osiris Kiadó, 338–339.
- <sup>19</sup> The most important architectural periodicals from the second half of the 19th century: *Építési Ipar* (later *Építő Ipar*, *Építő Művészet*) [*Construction Industry* (later *Building Industry*, *Building Arts*)], *Budapester Bauzeitung* (later *Bauzeitung für Ungarn*) [*Budapest Building Journal* (later *Construction Newspaper for Hungary*)], *Magyar Mérnök- és Építészegylet Közlönye* [*Journal of the Hungarian Society of Engineers and Architects*]. Cf. MARÓTYZ, Katalin: Mintakövetés és invenció a XIX. század második felének budapesti építészetében [Pattern following and inspiration in Budapest architecture of the second half of the 19th century]. *Építés–Építészettudomány [Construction – Architecture]*, No. 1–2, 2005. 36–37.
- <sup>20</sup> SISA, József: *Építészeti szakfolyóiratok [Architectural journals]*. In Idem (ed.) 2013. 345.
- <sup>21</sup> Cf. PUSZTAI, László: A bírósági épület [The court building]. In KÁLLAY, István – PUSZTAI, László – STIPTA, István: *Bírósági épületek Magyarországon [Courthouses in Hungary]*. Budapest, 1993. HG & Társa Kiadó, 33–51.; KENGYEL, Miklós: *Perkultúra. A bíróságok világa. A világ bíróságai [Culture of litigation. The world of courts. The courts of the world]*. Budapest–Pécs, 2011. Dialóg Campus, 15–137.; MEYERI-PÁLFFI, Zoltán: Az igazságügyi szervezet a fizikai valóságban [The judicial organization in physical reality]. *Jogtörténeti Szemle [Review of Legal History]*, No. 1–2, 2017. 87–96.; Idem: Bíróságok a dualizmus kori Magyarországon. Igazságügyi paloták a polgári korban [Courts in dualist Hungary. Judicial Palaces in the civil era]. *Rubicon*, No. 9–10, 2019. 66–75.; Idem: Bírósági épületek Magyarországon és külföldön [Court buildings in Hungary and abroad]. In TAKÁCS, Péter (ed.): *A jog megjelenése, épített környezete és szimbólumai. A jogi kultúra látható világa [Representation of the law, built environment and symbols of law. The visible world of legal culture]*. Budapest, 2020. Gondolat Kiadó, 177–201.; Idem: Gondolatok a jog (szolgáltatás) ábrázolhatóságáról, térigényéről és a hatalom architektúrájáról [Thoughts on the illustrability, the space requirements of jurisdiction, and the architecture of state power]. In Idem (ed.): *Ábrázolt és épített jog [Depicted and constructed law]*. *Jogtörténeti Értekezések 53*. [Essays of Legal History 53]. Budapest, 2021. Gondolat Kiadó, 11–25.
- <sup>22</sup> Cf. e.g. KÉPESSY, Imre: A bírói függetlenség kialakulása Magyarországon [The Development of Judicial Independence in Hungary]. In MENYHÁRD, Attila – VARGA, István (eds.): *350 éves az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Kara. A jubileumi év konferenciasorozatának tanulmányai I–II. [350 years of the Faculty of Law and Political Sciences of Eötvös Loránd University. Studies of the jubilee year conference series I–II]*. Budapest, 2018. ELTE Eötvös Kiadó, 1052–1060.; BÓDINÉ BELZNAI, Kinga: Gondolatok a bírói függetlenségről [Reflections on Judicial Independence]. *Ítéltáblai Határozatok [Decisions of the Court of Appeal]*, No. 2, 2018. cover; Idem: *Hivatás és függetlenség [Profession and independence]*. *Jogtörténeti Értekezések 48*. [Essays of Legal History 48]. Budapest, 2020. Gondolat Kiadó.
- <sup>23</sup> MEZEY, Barna: A börtönrendszerek és a börtönépítészet a 19–20. századforduló idején Prison systems and prison architecture at the turn of the 19th and 20th centuries]. *Jogtörténeti Szemle [Review of Legal History]*, No. 1, 2006. 50.
- <sup>24</sup> Cf. MEYERI-PÁLFFI, Zoltán: Wágner Gyula törvényszéki fogházai [The detention houses of Gyula Wágner]. In GOSZTONYI, Gergely – RÉVÉSZ T., Mihály (eds.): *Jogtörténeti parerga II. Ünnepi tanulmányok Mezey Barna 65. születésnapja tiszteletére [Legal history parerga II. Festive studies in honour of Barna Mezey's 65th birthday]*. Budapest, 2018a. ELTE Eötvös Kiadó, 205–210.
- <sup>25</sup> The Royal Central District Court of Budapest (designed by Ferenc Jablonszky). Main façade and cross section. JABLONSKY, Ferenc: A Budapesti Központi Kir. Járásbíróság épülete [The building of the Royal Central District Court of Budapest]. *Építő Ipar – Építő Művészet [Building Industry – Building Arts]*, Vol. 5, 1916. 25.; Vol. 6, 1916. 31.
- <sup>26</sup> Cf. KLEMMER–WASSERMANN–WESSEL 1993. 36.
- <sup>27</sup> Cf. MORAVÁNSZKY, Ákos: *Competing Visions: Aesthetic Invention and Social Imagination in Central European Architecture 1867–1918*. Cambridge, Mass., 1998. MIT Press, 25–26.
- <sup>28</sup> Cf. MEYERI-PÁLFFI 2019. 73–75.
- <sup>29</sup> For more on this topic, see SZÉKELY, Márton – MARÓTYZ, Katalin: A pályázat mint jelenség a késő historizáló építészet korában [The tender as a phenomenon in late historicist architecture]. *Építés–Építészettudomány [Construction – Architecture]*, No. 1–2, 2018. 93–116.; Idem: Magyar közigazgatási épületek pályázatai a dualizmus korában. Stílusirányzatok a Földművelésügyi Minisztérium 1907-es átépítési tervpályázatán [Tenders of Hungarian administrative buildings in the dualism era. Stylistic trends in the competition for the Ministry of Agriculture's rebuilding plans in 1907]. *Építés–Építészettudomány [Construction – Architecture]*, No. 1–2, 2019. 103–133.; SZÉKELY, Márton: *Építészeti tervpályázatok Magyarországon 1891–1918 között (Doktori disszertáció) [Architectural design competitions in Hungary between 1891–1918 (Doctoral dissertation)]*. Budapest, 2020. BME ÉPK.
- <sup>30</sup> Cf. MEYERI-PÁLFFI 2018a. 207.
- <sup>31</sup> On Wágner, see DOBROTKA, Katalin: A magyar börtönügy arcképcsarnoka. Wagner Gyula (1851–1937) [Hungarian Portrait Gallery. Gyula Wagner (1851–1937)]. *Börtönügyi Szemle [Prison Review]*, No. 4, 2012. 93–96.; MEYERI-PÁLFFI, Zoltán: „Following a Model” as an Element of the Hungarian Legal Culture with Special Regard to Gyula Wágner's Judicial Architecture. In GEPHART, Werner – LEKO, Jure (eds.): *Law and the Arts. Elective Affinities and Relationship of Tension*. Frankfurt am Main, 2017. Vittorio Klostermann, 363–393.; MEYERI-PÁLFFI, Zoltán: *Az egri Törvényszék – The Eger Courthouse*. Budapest–Eger, 2018b. Országos Bírósági Hivatal, 28–32.

- <sup>32</sup> On Ferenc Jablonszky, see BARÁTH, Attila: *Élő kövek. Emlékek a Körömend-i Járásbíróság múltjából* [Living Stones. Memories from the past of the Körömend District Court]. Szombathely, 2015. Szombathelyi Törvényszék, 26–29; MEGYERI-PÁLFFI, Zoltán: A Püspökladányi Királyi Járásbíróság megszervezésének és elhelyezésének története [History of the organisation and location of the Royal District Court of Püspökladány]. In Idem (ed.): *A jogszolgáltatás története Püspökladányban* [History of Justice in Püspökladány]. Debrecen, 2021. Debreceni Törvényszék, 83–84.
- <sup>33</sup> On the work of Sándor Aigner, see HORVÁTH, Zsuzsa: Aigner Sándor (1854–1907). Az Örökimádás-templom tervezőjének életműve [Sándor Aigner (1854–1907). The life's work of the designer of

the Church of the Eternal Adoration]. In ROZSNYAI, József (ed.): *Építőművészek Ybl és Lechner korában* [Architects in the age of Ybl and Lechner]. Budapest, 2015. Terc, 166–195.

<sup>34</sup> See more in PUSZTAI 1993, 33–49.

<sup>35</sup> Cf. BÓDINÉ BELIZNAI, Kinga: *120 éves az Igazságügyi Palota* [120 years of the Palace of Justice]. Budapest, 2016. HVG-ORAC Lap-és Könyvkiadó Kft.

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## The Characteristics of Researching Legal Customs in Spain and Hungary in the Light of the Accomplishments of Joaquín Costa Martínez and Ernő Tárkány Szücs

This article is intended as a comparative analysis of research history in Spain and Hungary linked to the history of European legal custom studies in the context of modern legal development in the 19<sup>th</sup>–20<sup>th</sup> centuries, based on the scientific accomplishments of Joaquín Costa Martínez (1846–1911) and Ernő Tárkány Szücs (1921–1984).<sup>1</sup> Studying the two significantly different models and research paths well distinguishable in space and time may present novel information and aspects not only for Hungarian researchers less familiar with the Spanish results and findings, but also on a European level.

### 1. Legal custom studies in Europe

In the early days of European legal custom studies there was a sharp difference between the essentially theoretical historical-legal German approach and the legal custom surveys associated with Russian imperial government and a pragmatic approach to codification. This was reflected by the varying research disciplines as well: while the historical-legal approach of the German-speaking territories connected legal history with legal custom studies, the Russian social approach with pragmatic roots considered legal custom to be a part of living law.<sup>2</sup>

The *folk-psychological perspective*, as a theoretical starting point, associated with the early 19<sup>th</sup>-century activity of Friedrich Karl von Savigny (1779–1861) attached particular importance to folk law represented in every aspect of folk culture (e.g., folk tales, proverbs, folk songs), connected with customary law. It was in this spirit that Jacob Grimm (1785–1863) and Wilhelm Grimm (1786–1859) started to collect “legal antiques”, Josef Kohler (1849–1919), who considered legal custom to be a part of comparative law, set out to explore parallel features, and Albert Hermann Post (1839–1895) developed a quantitative research methodology.<sup>3</sup> When Savigny, the founder of the historical school of law and initiator of folk law research, was given the task to oversee the drafting of the standard German Civil Code as Minister of Justice (1842–1848), this paved the way for the integration of legal folk customs as well.

Starting from the early 19<sup>th</sup> century, the Russian state, recognising the right of the conquered peoples to act in their own matters in accordance with their own legal customs, attached increasing importance to surveying legal customs in particular. The survey of customary law associated with Count Mikhail Mikhailovich Speransky (1772–1839) was completed already in 1822; the legal customs of Siberia were studied on the spot, “as told by the people themselves, to be drawn up and testified by the nobility”, with several parts of the 1847 survey of the Imperial Russian Geographical Society dedicated to legal customs too. For example, the Russian government conducted a survey of “living customary law” among the peoples of the Caucasus between 1836 and 1844. Maxim Maximovic Kovalevsky (1851–1916), professor of comparative law and a follower of Henry Sumner Maine (1822–1888) set out to study customary law in the Caucasian region with the renowned linguist and ethnographer Vsevolod Fedorovic Miller in 1878.<sup>4</sup> (In the second half of the 19<sup>th</sup> century a series of additional monographs on judicial life were published with respect to Mordovian, Vogul, Samoyed, Sami, Kryalan, Estonian, Votian, Zuryen, Permian, Cheremis, Chuvash, Bashkir, Yakut, Kyrgyz, Kara-Kirghiz, Turkoman and Buryat peoples, among others.)

Russian government considerations as well as the publication of the survey materials encouraged further

research from the late 19<sup>th</sup> century, during the period of nation-building. The South Slavic Academy in Zagreb decided to survey the South Slavic “living legal customs” in 1867, published by Baltazar Bogišić (1834–1908) in 1874, relying on the results of German and Russian researches.<sup>5</sup> (As Minister of Justice, Bogišić later used the survey materials for the preparation of the Civil Code of Crna Gora.) This period is associated with the surveying of legal customs by Boleslaw Grabowsky in Poland (1889) and Stefan Bobchev in Bulgaria (1897), as well as a publication on Albanian tribal customary law and certain elements of Croatian customary law by Lajos Thallóczy in Hungarian language issued in 1895.<sup>6</sup>

In the spirit of the codification efforts linked to legal modernisation, the survey of legal folk customs progressing in some countries of Europe (e.g., Italy, Portugal, etc.)<sup>7</sup> incorporated the survey conducted by Joaquín Costa (1846–1911) in the Aragon region in the 1880s in preparation for the codification of Spanish private law, and the early 19<sup>th</sup>-century researches carried out by Altamira y Crevea in Alicante (1905) and Carreras y Artau in Catalonia (1908).<sup>8</sup>

## 2. The characteristics of legal custom studies and prominent researchers in Spain and Hungary

Apart from some reference in research history, the results of the Spanish legal custom studies are almost completely unknown in Hungary. A 1919 review of the results of international researches on “living legal customs” written by Károly Tagányi mentions the research conducted in Spain as an exception in “the Western cultures reluctant to study their living legal customs”. Tagányi specifically refers to Costa’s work in Aragon (1884, 1886) and his publication on Spanish rural communities (1902), and Altamira’s research of the rural communities of Alicante (1905).<sup>9</sup> Unfortunately, however, Tagányi’s scientific programme dedicated to Hungarian legal custom studies published also in German received very little attention and therefore the Spanish results and efforts were unable to influence research activity in Hungary. It was only much later that the *Ethnologica Europaea*, a study by Ernő Tárkány Szücs published in 1967 on the results and tasks of legal ethnography in Europe discussed the legal custom surveys conducted by Costa and Altamira with reference made to Tagányi, adding a supplement on the Catalonian research by Carreras (1908) based on his own study.<sup>10</sup>

In fact, however, a deeper knowledge of Spanish legal custom studies could have positively influenced Hungarian research activity in many ways. Social embeddedness, the continuity of customary law research commenced in 1883 in preparation for the codification of standard private law, and the collectivisation and institutionalisation of research activity constitute the very aspects generally listed among the unrealised goals of Hungarian legal custom studies that could help address the fundamental issues

and specificities of Hungarian research history (e.g., the delay in commencing legal custom studies, lack of institutionalisation).

Since 1880 Spanish research activity has been organised in an institutionalised framework, with targets adapted to the current social needs. In Hungary legal custom studies became more common only in 1939, and the numerous failed attempts at institutionalisation (1919, 1939–1948, 1975) led to individual research careers and accomplishments.

From the start until its institutionalisation, Joaquín Costa was a prominent figure of Spanish legal custom research. Equally qualified in law, history, and social sciences, he managed to introduce legal custom studies into Spanish public thinking through his political activity. Costa invited several renowned individuals with extensive experience and significant social and professional reputation to participate in the research and created its institutional background as well.

In Hungary there was no such dominant figure similarly learned in social policy and sciences with experience in research and research organisation activity. Károly Tagányi, president of the Hungarian Ethnographic Society who drew up a scientific programme for Hungarian legal custom studies (1919) was a historian and researcher of legal customs, primarily responsible for a literary review and situation analysis and for outlining the necessary tasks and duties. However, the accomplishment of his goals and the continuation of his work were prevented by the war as well as personal circumstances. In 1939, based primarily on the results of German legal ethnographical researches complemented with some French findings, István Györffy took on himself the collectivisation and institutionalisation of Hungarian folk law research and the conduct of surveys involving practitioners of law and ethnography, but he died without realising his ambitions. Several legal historians, ethnographers and Ministry of Justice employees attempted to complete his survey, but it remained unfinished and fragmented due to the events of the Second World War, and the current social and political circumstances. Also, the dogmatic-methodological approach taken by legal historian György Bónis and the legal ethnographical perspective applied by lawyer-ethnographer László Papp could not be carried through. Ernő Tárkány Szücs, who himself contributed to the research of Hungarian legal customs between the two World Wars (1939–1948) was able to issue a monograph summarising the results only several decades later (*Magyar jogi népszokások [Hungarian Legal Folk Customs] 1981*), though relying primarily on German research history in dogmatic matters. In Hungary the first research group with the goal of summarising the results of previous studies on Hungarian legal folk customs as a scientific workshop for interdisciplinary research activities with institutional (university) background was set up much later, in 2011 (*Tárkány Szücs Ernő Legal Cultural Historical and Legal Ethnographic Research Group*).<sup>11</sup>

In the following chapter we review the characteristics of researching legal customs in Spain and Hungary in the

light of the accomplishments of Joaquín Costa Martínez and Ernő Tárkány Szücs and their role as science-research organisers not only to remedy this shortcoming, but also for mutual benefit.

### 3. Legal custom studies in Spain and the role of Joaquín Costa Martínez

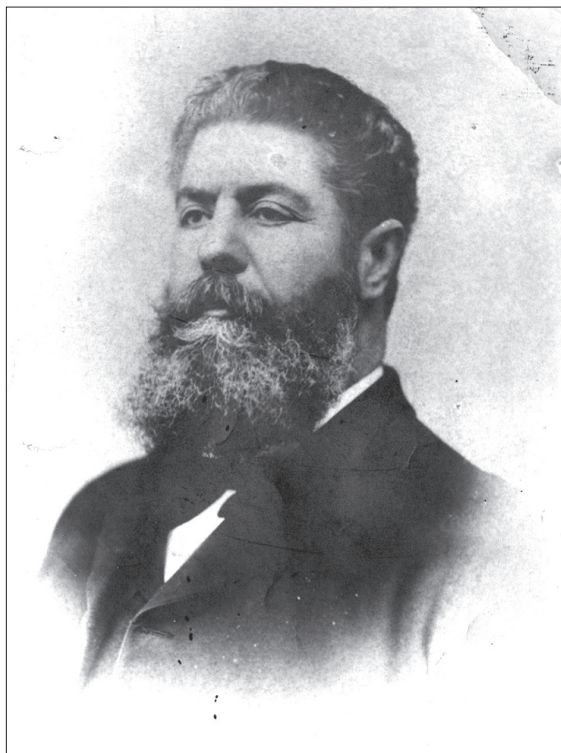
The 150-year history of Spanish legal custom research and legal modernisation is closely connected with Joaquín Costa Martínez. His legal-philosophical, dogmatic, and methodological foundations, comprehensive research programme and publications, as well their legal-social policy level utilisation (including his role as science organiser) contributed to the fact that Costa successfully integrated the results of legal custom research into Spanish legal science and legal history.

Costa received his degrees in law (1872) and humanities (1873), with a doctoral title in both (1874–1875). He pursued his career as a teacher, journalist, editor, public notary, and state attorney. Costa was actively engaged in public and political matters; he founded the *Colonial Geographical Society* (1884), the *Spanish Society of Africanists* (1884) and the *Society of Commercial Geography* (1885). To further modernisation, i.e., the Spanish “regeneration” movement, he also assumed a political role. His programme was focused on modernisation, with a view to representing the interests of the middle class and rural peasantry. His articles of social criticism condemned the landowner oligarchy and political corruption and promoted economic and social betterment.<sup>13</sup> In this context it seems obvious that, for Costa, the study and sharing of legal folk customs and traditional values was also a means of expressing contemporary social criticism. As a lawyer and politician, Costa found it important to research legal customs at the time of legal modernisation, just before the codification of Spanish private law, in order to “promote the study of Spanish folk law with special significance not only for the history of our legal institutions, but also for furthering the future codification of Spanish private law”.<sup>14</sup>

Costa believed that the knowledge of folk law could also guarantee the effectiveness of the Spanish private law codification process.

*“If the specific way of life of each people is to be respected, we must begin by respecting the customs that form an integral part of that life, and integrate all of them into the Code, according to the principle of diversity within unity.”*<sup>15</sup>

He argued for the same in a publication analysing the relationship between codification and legal custom studies (*La vida del derecho*, 1876), as well as other works concerning family, property, inheritance, obligation, traditional self-governance and land communities, laying the dogmatic, thematic and methodological foundation for research activity (*Derecho consuetudinario del Alto Aragón*, 1879; *Materiales*, 1885;<sup>16</sup> *Derecho consuetudinario y economía popular de España*, 1902).<sup>17</sup> His referred publications, as well as his widely acclaimed monograph on the archaic traditions of rural communities (*Colectivismo agrario*, 1898) provide the pillars of Spanish legal custom research still valid today.



Joaquín Costa Martínez (1846–1911)<sup>12</sup>

In literature, despite its strong legal-philosophical association,<sup>18</sup> Costa’s research was generally considered to belong to legal history. This was due to the fact that Costa frequently quoted Friedrich Karl von Savigny, the founder of the historical school of law as a source for legal-dogmatic foundation.<sup>19</sup> Costa himself viewed the unique laws of the 19<sup>th</sup>-century Spanish provinces as a reflection of the local folk spirit, dogmatically stating that the science of folk law (*Wissenschaft des Volksrechts*) should be created not by defining legal norms but by examin-

ing legal relationships and institutions.<sup>20</sup>

According to Costa, law has its roots in tradition, and every legal provision in effect originates from custom or tradition. Custom represents the actual law experienced by a community, contrary to the formal laws published through bulletins. In his words: the contrast between folk law and formal law constitutes the very feature that will distinguish the real Spain from its formal version.<sup>21</sup> (Costa’s views should be compared with the definition supplied by Barna Mezey for the fundamental difference between law and legal customs (formal law versus customary law, or top versus bottom) as follows:

*“Customary law is an important area of law, inherited from an ancient legal order and created in a feudal society that existed in the borderland between custom and formal law. The importance of the governed life*



*situations held up the institution of community coercion which gave legal effect to its rules. Eventually, it evolved in response to the regulatory matters rejected by 'formal law', in the 'bottom' sphere left intact 'from above' and, over time, gained a resilience that enabled it to maintain a rival legal system. The observance of customary law was not based on the competence, authority, legislative power or privilege of some sort of legislative body, but on the conviction of a community which recognized the need to accept the established rules.*"<sup>22</sup>

The 150-year-long study of Spanish legal customs can be defined in Costa's words:

*"the subject of research is presented by the customs that actually exist in a society at a given time and can be empirically proved as a social practice, the normative effectiveness of which can be verified together with other normative systems, including the state legal systems".*

In the course of his surveys and field researches Costa himself sought to find appropriate explanation, justification, and legitimation.

Costa drew up a comprehensive research programme to collect legal customs, with a view to the exploration of old legal customs and living legal practices and their integration into the process of private law codification, based on the examples of Savigny and Bogišić. He pointed out the need for an institutional framework from the very beginning. In his view, raising awareness in the scientific community (lawmakers, legal experts, philosophers, and historians) about legal customs and their research was critical not only because old legal customs and living legal practices represent the "roots of a nation's life", but also because they can provide a background and source for modern Spanish law-making.<sup>23</sup>

Based on Savigny's research methodology, Costa – whom Georg Beseler<sup>24</sup> compared to Baltazar Bogišić for the significance of his work in methodology development – issued a methodological guide together with his call for action. His guide emphasised the need for a detailed accurate description of every legal custom or practice, possibly supported with documents and sources, with detailed instructions concerning the research process.

*"Each collected custom should be described in as much detail as possible, without omitting any particulars, and not separated from, but together with their specific circumstance, as an integral element, connected with all manifestations of life."*<sup>25</sup>

Costa's activity was not just limited to actual research and publication of their results. Over time, his persistence paved the way for a major accomplishment: the institutionalisation of Spanish legal custom research. Upon his proposal, the *Real Academia de Ciencias Morales y Política*, a state-funded institution established in 1897 began to issue annual calls for projects to research obsolete forms of customary law and the reasons for their "disappearance", and to conduct current

surveys.<sup>26</sup> This resulted in comprehensive researches between 1897 and 1917 covering the entire territory of Spain. The research materials reflected remarkable thematic richness with respect to the legal customs of the individual communities, including private law and public law.

In addition to establishing a new school of thought, Costa's work paved the way for the integration of Spanish legal customs into legal science starting from the 19<sup>th</sup> century. In the initial phase of the process the Department of Legal Philosophy was set up within the Central University of Madrid in 1845, overseen by Julián Sanz del Río. The department influenced by the Krausist movement and ideology specifically encouraged researches on the concept, interpretation, and role of customs, and offered optional subjects such as *Customary law: origin, foundations, and values* for doctoral training.<sup>27</sup> The training and research activities of the department had a significant influence on Costa as well. The head of the department, Francisco Giner, who wished to integrate customary law into university training raised the idea of a department dedicated to customary law in 1887 and offered Costa a position as associate professor with the opportunity to teach the subject in 1902.

The series of events taking place between 1863 and 1888 in preparation for the Spanish code of private law [*Congreso de juriscultos* (Madrid 1863), *Congreso de juriscultos aragoneses* (Zaragoza 1880–1881), *Congreso de juriscultos catalanes* (1881), *Congreso jurídico español* (Madrid 1886), *Congreso jurídico de Barcelona* (1888)] constituted important milestones in the research of legal customs as well. Costa himself took part in the Zaragoza Congress, submitted a paper for the Barcelona event, and published *La libertad civil y el Congreso de juriscultos aragoneses* in 1883 summarising the lessons learned. In 1896 the journal *Revista general de Legislación y Jurisprudencia* published an article by Miguel de Unamuno<sup>28</sup> dedicated to Vizcaya, and from 1897 a special column titled *Derecho civil y derecho consuetudinario* was launched, overseen by Joaquín Costa, about customary law. In 1901–1902 the *Ateneo* of Madrid prepared a special survey for collecting legal customs in relation to birth, marriage and death.

Joaquín Costa wanted to understand the general problems of human society and Spain's contemporary social issues through law. As such, he is considered to be the forerunner and co-founder of several disciplines of 20<sup>th</sup>-century Spanish social sciences (ranging from anthropology to economic science, history, law, sociology and education), making the research of Spanish legal customs a practice still pursued today.<sup>29</sup> Costa's heritage is still influential in the study of Spanish legal customs, and the products of the past 150-years can be accessed through a number of monographs, scientific publications and databases, as well as various research institutions and research projects. It has the power to fulfil the mission defined in the words of Ureña y Smenjaud (1852–1930)<sup>30</sup>:

*"Let us start by understanding how the Spanish people lived and experienced the law in the various stages of its development and gather the last remnants of our ex-*

*tremely valuable customary law driven to extinction by new laws and the ever-increasing desire to standardise social customs.*"<sup>31</sup>

The individual provinces of the unified modern Spain still observe their local legal customs as a manifestation of historical, cultural, territorial, and social values, common cultural heritage and *collective identity*<sup>32</sup> forged over many centuries.

#### **4. Legal custom studies (folk law research) in Hungary and the role of Ernő Tárkány Szücs**

Considering the nature of Spanish legal custom studies and Costa's role we can rightly ask: why is it that Hungary joined the European process of researching legal customs only at the beginning of the 20<sup>th</sup> century?

Historically it is clear that the study of legal folk customs began to take place already in the late 18<sup>th</sup> century in line with the practical requirements of enlightened absolutist governance. Before introducing legal regulations governing the individual life situations, Joseph II ordered the collection of the appropriate "living legal customs" and folk practices. The political and legislative efforts of the first third of the 19<sup>th</sup> century also concerning ordinary people (serfs, peasantry) were mostly made in public law. The collection of the "living legal customs" of the individual communities, relating, for example, to inheritance, was given little attention.<sup>33</sup> The major events that influenced the legal institutions of Hungary's late 19<sup>th</sup>-century civil society required no legitimation by way of researching legal customs. In the neoabsolutist era, with the partial introduction of Austrian law in the Hungarian territories (1850–1861) the study of folk law was completely unimportant. Later on, with the legal modernisation following the Austro–Hungarian Compromise of 1867 all things considered "rural" were viewed as obsolete, with efforts made to catch up with the civil, economic, social, and legal developments typical across Europe, based on the foreign models and patterns regarded most appropriate. The process of establishing the modern legal institutions of Hungarian civil society was completed only in the early 20<sup>th</sup> century, including, for example, the codification of private law.<sup>34</sup> It was only in 1901, during the debate of the draft legislation on standard private law and the issue of inheritance in particular that, similar to the initiative to introduce legal customs into the standard civil code of Germany overseen by Savigny in 1842–1848, the idea that the inheritance customs of rural Hungary should be researched was finally raised. This resulted in the first study on Hungarian legal customs written by Miklós Mattyasovszky (with a similar study completed by János Baross around the same time).<sup>35</sup> It was the first time that the concept of "living legal customs in rural Hungary" emerged in the context of law and public discussion.

Based on the European results, a number of researchers managed to draft individual research programmes and initiatives between the two World Wars. Historian Károly Tagányi, legal historian Győző Bruckner and ethnographer Akos Szendrey were particularly active, emphasising the importance of researching folk law, including surveys.<sup>36</sup> Unlike in Spain, however, in the absence of an organised institutional framework and long-term goals, these efforts remained isolated, with individual publications and accomplishments.

A series of publications by Costa's Hungarian "colleague", historian-archivist Károly Tagányi (1858–1924), is perhaps one of the exceptions; during his time as president of the Hungarian Ethnographic Society (1920–1924) he issued a research programme viewed as the fundamental basis for Hungarian legal custom studies.<sup>37</sup> Tagányi's review offered on research history, the first one to mention the research of Spanish legal customs and Costa's role, was just as important. The latest results of the international researches were also reflected in Tagányi's other publications on family law and inheritance law, combining historical approach and current research with an ethnographic-ethnological perception. Tagányi was the first one to discuss Russian legal custom studies, the accomplishments of the German and English historical schools, and the research programme initiated by Baltazar Bogišić, one of the founders of European legal ethnography, including his 352-item survey and their results. His research, however, was still based on the German model and Kohler's activity. Although Tagányi's initiative published in Hungarian and German remained largely unnoticed, his call for action encouraged the development of further research programmes (Győző Bruckner, Ákos Szendrey). Between the two World Wars the researches performed in Hungary were primarily influenced by the French and German models – the results of Spanish legal custom studies, although extensively published, were still unknown. The starting point for the study of legal customs, increasingly defined as legal ethnography, was largely based on the conceptual and methodological foundations provided by René Maunier: distinguishing formal law and folk law based on local oral tradition – it was the latter that became the focus for legal ethnography.<sup>38</sup>

The purpose, theoretical background, and methodology of Hungarian legal custom research (folk law research) between 1939 and 1948 was influenced by the fact that it took place at the initiative of István Györffy (1884–1939), professor of ethnography, with support provided by the Ministry of Justice.<sup>39</sup> On behalf of the professional community, legal historian György Bónis emphasised its significance in ethnographic, legal history and legal policy terms:

*"The benefit of our work will be threefold: we will discover a different side of our people, the past of our laws will be better revealed through tradition, and our jurisprudence will develop a stronger national (Hungarian) character."*<sup>40</sup>

After Györffy's death the research objectives changed in line with the change in management. Bónis continued to emphasise its legal historical perspective, while Györffy's former colleague, lawyer-ethnologist László Papp put focus on the possibility of cultural renewal in the spirit of Györffy's cultural ideal. "Our legal system is still evolving, and our private law is about to be codified [...]"<sup>41</sup> The followers of the Ministry's approach (István Antal, Gábor Vladár, J. Miklós Hofer) supported the legal-political-legislative perspective. The notice issued by the Minister of Justice to encourage participation also emphasised "the understanding of the national spirit apparent in the written laws, as well as the legal customs and folk traditions".<sup>42</sup>

For a while, the professional, methodological and (partly) institutional background of folk law research was guaranteed by Professor István Györffy, head of the Pázmány Péter University Institute of Ethnography and the Hungarian Institute for Regional and Folk Research. Just like Miklós Mattyasovszky before him, Györffy looked to the Ministry of Justice for support, and invited the professional community as well as volunteers to participate. Accordingly, the Minister issued a notice emphasising the appropriateness and necessity of the goal both in general terms and from the point of view of codification and judicial enforcement. He also agreed with the concept of involving *legal practitioners* in the collection of legal customs and folk traditions.

After Györffy's death the Ministry became fully responsible for research coordination and management. In a further notice issued in 1940, the Minister of Justice autonomously modified the original professional expectations on the basis of the initial reports and results. In addition to (fully or partially) completing the highly extensive professionally developed surveys originally consisting of 95 items, it was also deemed sufficient to collect fragments of data heard or experienced in the course of field research. According to the third ministerial circular issued in 1942, by the end of the year the participating more than 140 researchers returned altogether 85 reports. The received materials were processed by László Papp in 1943, summarising the goal and the historical background of folk law research and the general and methodological lessons of the exercise in a separate study.<sup>43</sup> He considered the period between 1939–1943 as a pilot phase and submitted plans for continued research in a sound theoretical and methodological framework, proposing to fully redraft the entire questionnaire as well. Although the events of the war largely prevented the realisation of these plans, the first historical and methodological account of Hungarian folk law research written by László Papp was still published. Taking account of the accomplishments and their potential usefulness, legal historian György Bónis emphasised, similar to Costa, that the study and collection of legal customs can contribute to the exploration of the unwritten sources of legal history. The research addressed a number of issues that would have been impossible based purely on the written sources.<sup>44</sup>

Ernő Tárkány Szücs<sup>45</sup> was a student of György Bónis at the University of Kolozsvár (Cluj-Napoca), and his professional and research career began during a highly successful period of Hungarian legal custom studies (1939–1948). Although Tárkány Szücs is not regarded as Costa's peer or his student (he had no connection with Spanish legal custom studies other than mentioning Costa and other researchers in a review of European research history), nevertheless, due to the fragmented nature of Hungarian research and numerous unfinished projects, his synthesis of Hungarian research accomplishments between the two World Wars titled *Magyar jogi népszokások (Hungarian Legal Folk Customs)*, often viewed as a milestone in the history of Hungarian legal custom studies, and an outstanding achievement of Tárkány Szücs, should be specifically mentioned.

In researching Hungarian legal customs between the two World Wars, the studies conducted in a university framework represent a unique period (1942–1948). In this respect György Bónis should be mentioned, who was appointed as professor of legal history at the Franz Joseph University of Cluj-Napoca in 1941. At the invitation of István Györffy, Bónis joined the team in charge of organising and supervising Hungarian legal custom studies in 1939. Although his initial role in researching Hungarian legal customs involved only a number of articles and studies, as well as organisational activity and methodological consultancy,<sup>46</sup> he joined the university with new plans, namely to organise research in 25 settlements in Transylvania's Călatei (Kalotaszeg) region in the summers of 1942 and 1943.<sup>47</sup> Bónis considered it an important element of legal training (as an opportunity for the future lawyers to gain hands-on experience),<sup>48</sup> and also, he clearly hoped to provide a "model" for the further study of folk law in Hungary. While organising and participating in the research and working alongside Bónis, Ernő Tárkány Szücs, a law student at the time, became committed to legal custom studies for the rest of his life. His experience helped him understand the evolution of law taking place "both from below through customary law and from above through legislation and other sources of law over centuries", which provided a solid foundation for his subsequent work.<sup>49</sup> Also, the experience that the legal practice of a community was largely influenced, for example, by geographical location and socio-economic circumstances within a complex system of living laws and traditions contributed to his concept of "complex method", a major accomplishment of Tárkány Szücs's career.<sup>50</sup>

Due to the war the research conducted by the Legal History Seminar of the Franz Joseph University of Cluj-Napoca and the Transylvanian Institute of Science supported by the Hungarian Ministry of Justice remained unfinished, although Tárkány Szücs managed to participate in one of the last Hungarian projects organised by the University of Szeged, overseen by György Bónis in the village of Tápé (1 September–15 October 1948).<sup>51</sup>

Later (1950–1975) he was unable to pursue a career dedicated to the processing of materials from the 1939–1948 research and to study legal customs on a full-time

basis. Indeed, Hungary's communist regime considered the research conducted between the two World Wars "undesirable" on political grounds. However, Tárkány Szücs refused to give up: in addition to his role in the codification of Hungarian mining law, he continued to research and publish materials on folk law [e.g., *Vásárhelyi testamentumok (Testaments of Vásárhely)*, 1961; *A jószágok égetett tulajdonjegyei Magyarországon (Livestock property marks in Hungary)*, 1965; *Results and Task of Legal Ethnology in Europe*, 1967]. He single-handedly pursued the challenging task of Hungarian legal custom research for several decades. He was a bastion, a fixed point in cross-border research sought by Hungarian and foreign researchers alike. Tárkány Szücs acted as editorial board member and author for various international journals, he was a regular speaker at conferences, and played his part in the foundation of the international *Commission of Contemporary Folk Law*.<sup>52</sup>

Finally, from 1975 he was able to continue the study of Hungarian legal customs in an institutional framework, joining the Ethnographic Research Group of the Hungarian Academy of Sciences as the only researcher of the subject, actively pursuing research, and publication activity. He became a co-author of the Ethnographic Encyclopaedia on legal and socio-ethnographic matters, and his works summarising the achievements of several decades of legal ethnographical research were published in Hungarian and other languages [*Az élő jogszokások Európában (Living Legal Customs in Europe)*, 1975; *Die juristischen Volksbräuche der Eheschliessung bei den Ungarn*, 1976; *Jogi szokások a bányászatban (Legal Customs in Mining)*, 1978; *Jogi népszokások parasztágunk öröklési rendjében (Legal Folk Customs in the Order of Inheritance of our Peasantry)*, 1980; *A kézfogóval összefüggő jogi népszokások (Legal Folk Customs Related to the Betrothal)*, 1980; *A temetés jogrendje (The Legal Order of Funerals)*, 1980; *Fejezetek Békés társadalomnéprajzából (Chapters from the Socio-Ethnography of Békés County)*, 1983; *A jobbágyparaszti földtulajdon néhány problémája (Some Problems of the Landownership of Villeinpeasants)*, 1983; *A vásárhelyi baromgazdaság (The Cattle Farm of Vásárhely)*, 1983].

His monograph *Magyar jogi népszokások (Hungarian Legal Folk Customs)* was particularly significant in his career; in addition to obtaining his Doctor of Science (DSc) degree and honorary professor title at Eötvös Loránd University, he was widely acclaimed for creating a "one-person establishment" to study folk law with a unique legal approach.<sup>53</sup> The monograph presented an opportunity to legitimise and integrate the research results achieved during the two World Wars into Hungarian ethnographic science. The 900-page book aimed to summarise the unwritten legal customs and folk practices over the period 1700–1945. In terms of legal-theoretical, dogmatic, and methodological foundation, the book was primarily built on the topics discussed in the *Results and Task of Legal Ethnology in Europe*, aiming to verify the existence of autonomous communities and their heritage including Hungarian folk law and legal customs. The 100<sup>th</sup> anniversary of his birth was marked by numerous publications.<sup>54</sup>

## 5. Conclusion

In comparing the study of legal customs in Spain and Hungary, the fragmented, isolated ad-hoc nature of Hungarian research (study of folk law/legal ethnography) marked by individual accomplishments and phases becomes apparent. With the development of the civil society, the research conducted in Hungary failed to integrate into the process of legal modernisation in a consistent, legitimate way. It failed to clearly articulate its mission, and in the absence of social acceptance it was difficult to find an independent institutional place within the Hungarian scientific community. Alternately influenced by the German and French models and practices, for a long time it was undecided which branch to join – ethnographic or legal science (or perhaps historical science or sociology, depending on the science policy decisions of the moment).

As an important achievement of current legal ethnographic research activity in Hungary, the *Tárkány Szücs Ernő Legal Cultural Historical and Legal Ethnographic Research Group* was founded at the University of Pécs in 2011 (chairwoman: Janka Teodóra Nagy, co-chair: Barna Mezey), aiming to pursue research mainly in the field of legal culture history and legal ethnography. Adopting the initiative taken primarily by legal historians Barna Mezey, István Kajtár and Mária Homoki-Nagy, and seeking to act in an institutional (university) framework, this scientific workshop is committed to research in the field of Hungarian and universal political and legal history, legal theory and philosophy, international law, as well as legal sociology and anthropology in the context of legal culture history and legal ethnography, clearly based on the principles of interdisciplinarity. It is also active in other areas, such as matters considered to belong to its research profile in the field of historical science and ethnography, as well as publishing activity, and organising conferences.<sup>55</sup>

In the light of Spanish legal custom studies, the mission of the Research Group is essentially to explore, in the spirit of Costa's heritage, how the Hungarian people lived and experienced the law in its various stages of development, based on a collaboration of various disciplines. Seeking to address the general issues of the human society, as well as the specificities of Hungarian society, it wishes to transform the study of legal customs into a living practised area of research, to gather "the last remnants of our extremely valuable customary law driven to extinction by new laws and the ever-increasing desire to standardise social customs".<sup>56</sup>

At the end of the 19<sup>th</sup> century, even in Hungary, it was clear that good laws could only be made by knowing the folk customs and traditions; in 1981 Ernő Tárkány Szücs had to prove the mere existence of living legal folk customs through hundreds of examples! Indeed, these customs represent the most distinctive forms of our historical, cultural, territorial, and social values, our common cultural heritage and *collective identity* forged over many centuries – also in Hungary.

## Notes and references

- <sup>1</sup> Supported by the National Research, Development and Innovation Office – NKFIH, FK 132220.
- <sup>2</sup> NAGY, Janka Teodóra: European perspectives of studying Hungarian ethno-judicial life. In BÉLI, Gábor – DUCHONOVÁ, Diana – FUNDAR-KOVÁ, Anna – KAJTÁR, István – PERES, Zsuzsanna (eds.): *Institutions of Legal History with Special Regard to Legal Culture and History*. Pécs–Bratislava, 2011. 377–386.; NAGY, Janka Teodóra: The Legal Ethnography in Reflection of the Hungarian Research. *Central European Political Science Review*, No. 45, 2011. 74–93.
- <sup>3</sup> SAVIGNY, Friedrich Carl: *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft*. Heidelberg, 1814. Mohr und Zimmer; GRIMM, Jakob: Von der Poesie im Recht. *Zeitschrift für geschichtliche Rechtswissenschaft*, Nr. 2, 1816. 25–99.; KOHLER, Josef: Zur ethnologischen Jurisprudenz. *Zeitschrift für Vergleichende Rechtswissenschaft*, Nr. 9, 1886. 407–429.
- <sup>4</sup> КОВАЛЕВСКИЙ, Максим Максимович: *Современный обычай и древний закон. Обычное право осетин в историко-сравнительном освещении. I–II*. Москва, 1886; ГУТНОВ, Феликс Хазмура-зевич: *Обычное право осетин. Часть I. Адамы Тагаурского общества (Список Норденстренга 1844 г.)*. Владикавказ, 2012; NAGY, Janka Teodóra: The influence of V. F. Miller on the research of Hungarian jassy customary law. *Kavkaz-forum*, No. 2, 2020. 83–89.
- <sup>5</sup> BOGNÁR, Szabina: Valtasar Bogišić's Programme on Collecting Legal Customs: its Influence within Hungary. In BRENESELOVIĆ, Luka (ed.): *Spomenica Valtazara Bogišića o stogodišnjici njegove smrti 24. apr. 2008. godine*. Beograd, 2011. 165–182.
- <sup>6</sup> TAGÁNYI, Károly: *A hazai élő jogszokások gyűjtéséről I. A családi és öröklési jogszokások [On the collection of living customs in Hungary I. Family and inheritance customs]*. Budapest, 1919. Magyar Néprajzi Társaság, 51.; TÁRKÁNY SZÜCS, Ernő: Results and Task of Legal Ethnology in Europe. *Ethnologica Europæana*, No. 1, 1967. 195–217. In DUNDES, Alan – DUNDES RENTELN, Alison (eds.): *Folk Law I–II. Essays in the Theory and Practice of Lex non Scripta*. New York–London, 1994. 161–186.
- <sup>7</sup> TÁRKÁNY SZÜCS 1967; MATLA, Gabriella: A spanyol jogszokáskutatás úttörője: Joaquín Costa Martínez. [Pioneer of Spanish jurisprudence: Joaquín Costa Martínez]. In NAGY, Janka Teodóra (ed.): *A jogi kultúrtörténet és jogi néprajz új forrásai II. [New Sources on Legal Cultural History and Legal Ethnography II.]*. Jogi kultúrtörténeti és jogi néprajzi interdiszciplináris nemzetközi konferencia: Szekszárd, 2017. 09. 28–29. [Legal Cultural Historical and Legal Ethnographical Interdisciplinary Conference Szekszárd, 28–29 September 2017]. Jogi kultúrtörténeti, jogi néprajzi kiskönyvtár 7. [Legal Cultural Historical and Legal Ethnographic Book Collection 7]. Szekszárd, 2018. 266–267.
- <sup>8</sup> ALTAMIRA Y CREVA, Rafael: *Derecho consuetudinario y economía popular de la provincia de Alicante*. Madrid, 1905. Instituto Alicantino de Cultura Juan Gil-Albert; CARRERAS Y ARTAU, Joachim: *Indicaciones bibliográficas sobre costums jurídics d'Espanya i especialment de Catalunya. Estudis universitaris catalans*. Barcelona, 1908.
- <sup>9</sup> COSTA, Joaquín: Costumbres jurídico-economicas de Alto Aragon. *Revista general de legislación y jurisprudencia*, No. 64. 1884, 244–285.; Idem: *Derecho consuetudinario de Alto Aragon*. Madrid, 1886. Imprenta de la Revista de Legislación; Idem: *Derecho consuetudinario y economía popular de España*. Barcelona, 1902. Manuel Soler; ALTAMIRA Y CREVA, Rafael: *Derecho consuetudinario y economía popular de la provincia de Alicante*. Madrid, 1905. Imprenta del Asilo de Huérfanos del S. C. de Jesús; TAGÁNYI 1919. 52.
- <sup>10</sup> TAGÁNYI 1919; TÁRKÁNY SZÜCS 1967.
- <sup>11</sup> <http://jogineprajz.abtk.hu>; NAGY, Janka Teodóra: The Intellectual Legacy of Ernő Tárkány Szücs: Tárkány Szücs Ernő Legal Cultural Historical and Legal Ethnographic Research Group (Tárkány Szücs Ernő Jogi Kultúrtörténeti és Jogi Néprajzi Kutatócsoport), founded ten years ago. In TÁRKÁNY, Szücs Ernő: *Magyar jogi népszokások [Hungarian Legal Folk Customs]*. Budapest, 2021. Ludovika, 812–817.; NAGY, Janka Teodóra – SZABÓ, Ernő: Tárkány Szücs Ernő szellemi hagyatéka: a 10 éves Tárkány Szücs Ernő Jogi Kultúrtörténeti és Jogi Néprajzi Kutatócsoport [The Intellectual Legacy of Ernő Tárkány Szücs: The 10-Year-Old Tárkány Szücs Ernő Legal Cultural Historical and Legal Ethnography Research Group]. In NAGY, Janka Teodóra – BOGNÁR, Szabina – SZABÓ, Ernő (eds.): *Száz plusz tíz. Jubileumi kötet: Tárkány Szücs Ernő (1921–1984): Tárkány Szücs Ernő Jogi Kultúrtörténeti és Jogi Néprajzi Kutatócsoport (2011–2021) [„One Hundred Plus Ten” – Anniversary Volume Ernő Tárkány Szücs (1921–1984): Tárkány Szücs Ernő Legal Cultural Historical and Legal Ethnographical Research Group (2011–2021)]*. Szekszárd, 2021. PTE–BTK, 405–422.
- <sup>12</sup> [www.radiohuesca.com/sociedad/graus-conmemora-el-109-aniversario-de-la-muerte-de-joaquin-costa-03022020-134876.html](http://www.radiohuesca.com/sociedad/graus-conmemora-el-109-aniversario-de-la-muerte-de-joaquin-costa-03022020-134876.html).
- <sup>13</sup> COSTA, Joaquín: *Oligarquía y Caciquismo como forma actual de gobierno en España: Urgencia y modo de cambiarla*. Madrid, 1901. Imprenta de los Hijos de M. G. Hernández; CHEYNE, George James Gordon: ¿Por qué fue importante Costa? Huesca, 1987. Instituto de Estudios Altoaragoneses, 26.
- <sup>14</sup> COSTA, Joaquín: *Derecho consuetudinario del Alto Aragón. Revista General de Legislación y Jurisprudencia*, Madrid, 1879–1880. Imprenta de la Revista de Legislación, 152.
- <sup>15</sup> Ibid. 142.
- <sup>16</sup> COSTA, Joaquín – PEDREGAL, Manuel – GÓMEZ, Juan Serrano: *Materiales para el estudio del derecho municipal consuetudinario*. Madrid, 1885. Imprenta de la Revista de Legislación; COSTA 1902.
- <sup>17</sup> COSTA 1902.
- <sup>18</sup> COSTA, Joaquín: *La Vida del Derecho: ensayo sobre el derecho consuetudinario*. Madrid, 1876. Aribau y C<sup>a</sup>.
- <sup>19</sup> SAVIGNY 1814.
- <sup>20</sup> DELGADO ECHEVERRÍA, Jesús: *Joaquín Costa, jurista y sociólogo: Derecho consuetudinario e ignorancia de la ley*. Madrid, 2018. Dykinson S.L., 17–19.
- <sup>21</sup> DELGADO ECHEVERRÍA, Jesús: *Derecho y tradición jurídica aragonesa*. In PEIRO MARTÍN, Ignacio (ed.): *Joaquín Costa: El fabricante de ideas. Memoria de un centenario*. Zaragoza, 2012. Institución «Fernando el Católico», 214.
- <sup>22</sup> MEZEY, Barna: Szokásjog és szokás határán: jogszokások [On the border of customary law and custom: legal customs]. In MEZEY, Barna – NAGY, Janka Teodóra (eds.): *Jogi néprajz – jogi kultúrtörténet. Tanulmányok a jogtudományok, a néprajztudományok és a történettudományok köréből [Legal Ethnography – History of Legal Culture: Studies in the legal sciences, ethnography and history]*. Budapest, 2009. ELTE Eötvös Kiadó, 13–26.
- <sup>23</sup> RAMÍREZ JEREZ, Pablo – MARTÍNEZ NEIRA, Manuel: *La historia del derecho en la Real Academia de Ciencias Morales y Políticas*. Madrid, 2017. Universidad Carlos III, 27.
- <sup>24</sup> BESELER, Georg: *Völkrecht und Juristenrecht*. Leipzig, 1843. Weidmann'sche Buchhandlung.
- <sup>25</sup> RAMÍREZ JEREZ–MARTÍNEZ NEIRA 2017. 27–28.
- <sup>26</sup> Ibid. 23.
- <sup>27</sup> HERNÁNDEZ IGLESIAS, Fermín: *Origen, fundamento y valor del derecho consuetudinario*. Madrid, 1863. Establecimiento tipográfico de Vicente, y Lavajos.
- <sup>28</sup> Miguel de Unamuno (1864–1936) Spanish (Basque) writer, poet and philosopher, rector of the University of Salamanca. UNAMUNO, Miguel de: *Derecho consuetudinario de España: Vizcaya. Revista general de legislación y jurisprudencia*, No. 88, 1896. 42–71.
- <sup>29</sup> DELGADO ECHEVERRÍA 2018. 14.
- <sup>30</sup> Rafael de Ureña y Smenjaud (Valladolid, 1852 – Madrid, 1930) member of Real Academia de Ciencias Morales y Política.
- <sup>31</sup> PETIT, Carlos: *Derecho por entregas*. Estudios sobre prensa y revistas en la España liberal. Madrid, 2020. Universidad Carlos III, 242.
- <sup>32</sup> ARÉVALO, Javier Marcos – SÁNCHEZ MARCOS, María Jacinta: La antropología jurídica y el derecho consuetudinario como constructor de realidades sociales. *Antropología Experimental*, No. 11, 2014. 82.

- <sup>33</sup> GEORCH, Illés: Jegyzetek a Hármaskönyv III-ik Részé 29-ik Cikkelyéhez a Magyar Országai Parasztok örökösödése iránt [Notes on the 29<sup>th</sup> paragraph of the 3<sup>rd</sup> part of “Tripartitum” laws regarding the inheritance customs of peasants in Hungary]. *Tudományos Gyűjtemény [Science Repository]*, 1821. VII. 55–66.
- <sup>34</sup> HOMOKI-NAGY, Mária: „Az általam megkért hiteles tanúk előtt következő végső rendelkezésem tészem ...” *Jobbágy-parasztok végrendeletei Szentes mezővárosában [“Before the credible witnesses I have called, I make the following final order...” The Wills of the Serf-Peasants in the Market Town of Szentes]*. Jogi kultúrtörténeti, jogi néprajzi kiskönyvtár 5. [Legal Cultural Historical and Legal Ethnographic Book Collection 5]. Szekszárd, 2018. PTE KPVK.
- <sup>35</sup> MATTYASOVSKY, Miklós: *Törzsöröklési jog és törzsöröklési szokás [Right of inheritance and custom of inheritance]*. Budapest, 1904. Eggenberger-féle Könyvkereskedés; BOGNÁR, Szabina: *A népi jogélet kutatása Magyarországon [Research of folk law in Hungary]*. Néprajzi értekezések 5. [Ethnographic dissertations 5]. Budapest, 2016.
- <sup>36</sup> TAGÁNYI 1919; STIPTA, István: Győző Bruckner (1877–1962). *Gerundium: Egyetemtörténeti Közlemények 3. [Gerundium. Bulletins on University History 3]*, No. 1–2, 2012. 15–24.; SZENDREY, Ákos: Néprajz és jogtörténet [Ethnography and legal history]. *Ethnographia [Ethnography]*, No. 42, 1936. 144–150.
- <sup>37</sup> NAGY, Janka Teodóra: Folk Tradition as Reflected in the Court Decisions of the Hungarian Courts in the 19<sup>th</sup> and 20<sup>th</sup> Centuries: The Study on Legal Ethnography. In MACIEJ, Mikołaj – MALEC, Doroty – URUSZCZAK, Waclaw (eds): *Krakowskie Studia z Historii Państwa i Prawa*, Kraków, 2013. Wydawnictwo Uniwersytetu Jagiellońskiego, 31–36.; BOGNÁR 2016.
- <sup>38</sup> MAUNIER, René: Folklore juridique. *Archives de Philosophie du Droit et de Sociologie Juridique*, No. 3, 1937.
- <sup>39</sup> NAGY 2011. 74–93.
- <sup>40</sup> BÓNIS, György: Magyar népi jog [Hungarian folk law]. *Magyar Szemle [Hungarian Review]*, No. 2, 1939. 122.
- <sup>41</sup> GYÖRFFY, István: *A néphagyomány és a nemzeti művelődés [The folk tradition and the national culture]*. Budapest, 1939. Egyetemi Néprajzi Intézet.
- <sup>42</sup> NAGY, Janka Teodóra: *A magyar jogi népelektudat (1939–1948) története és forrásai [History and Sources of Research on Hungarian Legal Ethnography (1939–1948)]*. Jogi kultúrtörténeti, jogi néprajzi kiskönyvtár 6. [Legal Cultural Historical and Legal Ethnographic Book Collection 6]. Szekszárd, 2018. PTE KPVK; Idem: Bónis und die Forschung des Siebenbürgischen volkstümlichen Rechtslebens des Volkslebens (1939–1948). In BALOGH, Elemér – HOMOKI-NAGY, Mária (Hrsg.): *Tripartitum trium professorum = Három szegedi jogtörténész = Drei Szegediner Rechtshistoriker. Tudományos emlékülés Bónis György születésének 100., Both Ödön születésének 90. és Iványi Béla halálának 50. évfordulóján [Three Legal Historians of Szeged. Scientific symposium on the 100<sup>th</sup> anniversary of the birth of György Bónis, the 90<sup>th</sup> anniversary of the birth of Ödön Both and the 50<sup>th</sup> anniversary of the death of Béla Iványi]*. Szeged, 2017. Pólay Elemér Alapítvány–Iurisperitus, 262–270.
- <sup>43</sup> PAPP László: *A magyar népi jogélet kutatása [Research of the Hungarian folk law]*. Budapest, 1948. Kelet-Európai Tudományos Intézet; Idem: *Vezérfonal a magyar népi jogélet kutatásához [A guideline to the research of Hungarian folk law]*. Budapest, 1948. Kelet-Európai Tudományos Intézet.
- <sup>44</sup> NAGY 2018; BOGNÁR 2016.
- <sup>45</sup> NAGY, Janka Teodóra: Ernő Tárkány Szücs. Lawyer, Researcher of Hungarian Legal Ethnography (1921–1984). In TÁRKÁNY SZÜCS 2021. 818–820.; Idem: Ernő Tárkány Szücs (1921–1984) Jurist, Forscher der ungarischen Rechtsethnographie. In NAGY, Janka Teodóra – BOGNÁR, Szabina (Hrsg): *Tárkány Szücs Ernő. Rechtsgeschichte und Volksbräuche (Ausgewählte Studien)*. Budapest, 2021. Gondolat Kiadó, 16–18.
- <sup>46</sup> BÓNIS 1939.
- <sup>47</sup> NAGY 2018; BOGNÁR 2016; KŐHEGYI, Mihály – NAGY, Janka Teodóra: Adalékok a jogi néphagyománykutatás történetéhez [Data on the history of legal folk tradition research], *CUMANIA*, No. 14, 1997. 207–223.; TÁRKÁNY SZÜCS 1981.
- <sup>48</sup> BOGNÁR 2016.
- <sup>49</sup> TÁRKÁNY SZÜCS, Ernő: Jogszokásgyűjtés Kalotaszegen [Collection of legal customs in Kalotaszeg (Călatei)] *Kolozsvári Szemle [Cluj Review]*, No. 1, 1943. 68–69.
- <sup>50</sup> TÁRKÁNY SZÜCS 1981.
- <sup>51</sup> KŐHEGYI, Mihály – NAGY, Janka Teodóra: Bónis György és társai jogi népszokásgyűjtése Tápén I–III. [Collection of legal customs by György Bónis and others in Tápé I–III]. In BÁRKÁNYI, Ildikó (ed.): *Studia Ethnographicae*, Szeged, 1995, 1998, 2003. Móra Ferenc Múzeum, 195–249., 185–235., 233–245.
- <sup>52</sup> NAGY, Janka Teodóra: A “hid-szerep” értelmezési lehetőségei Tárkány Szücs Ernő életművében [Possibilities of interpreting the “bridge-role” in the oeuvre of Ernő Tárkány Szücs]. In Idem (ed.): *Tanulmányok Tárkány Szücs Ernő születésének 90. évfordulója tiszteletére [Studies in Honour of the 90<sup>th</sup> Anniversary of the Birth of Ernő Tárkány Szücs]*. Tárkány Szücs Ernő Emléknep és Konferencia [Ernő Tárkány Szücs Memorial Day and Conference], Szekszárd, 5 October 2011. Jogi kultúrtörténeti, jogi néprajzi kiskönyvtár 1. [Legal Cultural Historical and Legal Ethnographic Book Collection 1]. Szekszárd, 2014. PTE IGYK, 45–56.; BOGNÁR, Szabina: Egy jogi néprajzi szintézis lehetősége: Tárkány Szücs Ernő az MTA Néprajzi Kutató Csoportjában (1975–1984). [Possibility of a Legal Ethnographic Synthesis: Ernő Tárkány Szücs in the Ethnographic Research Group of the Hungarian Academy of Sciences (1975–1984)]. In NAGY–BOGNÁR–SZABÓ (eds.) 2021. 119–135.; BOGNÁR, Szabina: Zu Ehren des hundertjährigen Ernő Tárkány Szücs (1921–1984). In NAGY–BOGNÁR (Hrsg.) 2021. 271–283.
- <sup>53</sup> NAGY, Janka Teodóra: Ernő Tárkány Szücs: Hungarian Legal Folk Customs (1981). In TÁRKÁNY SZÜCS 2021. 821–823.; Idem: Tárkány Szücs Ernő és a magyar népi jogéletkutatás fénykora (1939–1948) [Ernő Tárkány Szücs and the Heyday of Hungarian Folk Law Research (1939–1948)]. In NAGY–BOGNÁR–SZABÓ (eds.) 2021. 103–117.
- <sup>54</sup> NAGY, Janka Teodóra: Ernő Tárkány Szücs und die Forschung zur ungarischen rechtlichen Volkskunde: Ergebnisse und Alternativen. In NAGY–BOGNÁR (Hrsg.) 2021. 284–297. NAGY–BOGNÁR–SZABÓ (eds.) 2021. 457.; NAGY–BOGNÁR (Hrsg.) 2021. 320.; TÁRKÁNY SZÜCS 2021. 873.
- <sup>55</sup> <http://jogineprajz.abtk.hu>; NAGY 2021; NAGY–SZABÓ 2021; NAGY, Janka Teodóra: Das geistige Erbe von Ernő Tárkány Szücs: Die vor zehn Jahren gegründete Tárkány Szücs Ernő Forschungsgruppe der Rechtlichen Kulturgeschichte und der Rechtlichen Volkskunde [Tárkány Szücs Ernő Jogi Kultúrtörténeti és Jogi Néprajzi Kutatócsoport]. In NAGY–BOGNÁR (Hrsg.) 2021. 22–27.
- <sup>56</sup> PETIT 2020. 242.



*“The task of school is to create a unified worldview for the new generation, to heal the sick Hungarian soul, so the young leaving the school will be able to stand in the great ideological fight.”<sup>1</sup>  
(Bálint Hóman)*

## 1. Grounds of national education and the cultural policy of Bálint Hóman

As it can be seen through the words of the Minister of Religion and Public Education, Bálint Hóman,<sup>2</sup> the Christian-national idea dominated the cultural and educational policy of the early 20<sup>th</sup> century. The essence of cultural and educational policy between the two world wars was summarized in an anonymous article published in the *Néptanítók Lapja* (*Teachers’ Journal*) on 15 January 1934, under the title of *Cultural supremacy and character education*:

*“And when the future of the nation stands before us: the child, let us not only instil practical thinking in their soul, but also ignite in them the ideal thoughts. Let them lead to moral consciousness so that she/he can judge even the finest nuances of good and evil. And deepen in their soul the instinctive power of moral resilience. Glow their soul into hard steel, train their character straight and develop their worldview in the right direction. Pay great attention to purposeful national education. Every child should feel that we are at the forefront of culture among the nations, they are also a part of it and that is why they can be proud to be Hungarian.”<sup>3</sup>*

Between 1932 and 1942 – based on the concept of cultural supremacy – the idea of national education played a central role in the cultural policy of Bálint Hóman<sup>4</sup> as Minister of Religion and Public Education. Hóman had a leading role in the history of Hungarian education: he was Minister of Religion and Public Education twice between 1932 and 1942, so the historian and culture politician stayed at the head of the Ministry of Religion and Public Education for almost ten years with a narrow one-year break. The opinion about him in his age was quite positive, it is reflected in the appreciation published in the *Néptanítók Lapja* (*Teachers’ Journal*) at the beginning of his second ministry:

*“The Hungarian teaching staff bids farewell to Count Pál Teleki with as much warm love as it greets Bálint Hóman whom they have locked in their hearts for a long time. The last nine months have not been a break in his nation-building work, because he left the chair of the Minister of Culture and worked hard in other areas to establish the Christian Hungarian life. We are proud that the excellent scientist, the great statesman, one of the most outstanding personalities of our scientific, social, and political lives after a short interruption be-*

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*came our leader again. He, the great creative minister, is well acquainted with every little point of our public education system. He knows where, what is good and right, and where, what is wrong, and as a penetrating scientist and culture politician, he immediately finds a way to help and improve. And we, Hungarian teachers have expressed it many times, and we constantly feel that the threads of gratitude have connected us with Bálint Hóman forever.”<sup>5</sup>*

Besides this, the opinions about him are still divided today,<sup>6</sup> primarily because of his role in the drafting of Jewish laws. After the Second World War, he was brought before a people’s court, which convicted him of war crimes, but “only” because he took part in the government meeting that approved the state of war between Hungary and the Soviet Union, and not because of his above mentioned role.<sup>7</sup> However, there is no doubt that he created permanent achievements as a Minister of Culture: in addition to the reorganization of higher and secondary education, focusing on public education policy, the introduction of eight-grade primary education, the reform of curriculum and the development of the institutional system of public education are also linked to his name.<sup>8</sup>

It was related to the ideological validity of the cultural policy that after Trianon the teachers moved from the detached areas to the motherland, so this career became (also) overcrowded, the selection became sharper, one aspect of which was whether the teachers met their duty to fulfil the requirements of Christian education. This criterion was not only examined after the Hungarian Council Republic during the impeachment of denominational teachers,<sup>9</sup> but they also looked back to the previous years, when the expectation itself had not been specified.<sup>10</sup> Religious, patriotic education became a part of the Christian-national ideology, the fulfilment of which had to be proved retrospectively by the teachers. According to this, nursing has become more accented in schools than teaching. The expectations for the teachers also pervaded the text of the oath they were to take, which is especially evident at the end of the oath: “I will raise the youth entrusted to my care in the love of the Hungarian homeland and in the spirit of religious moral.”<sup>11</sup>

## 2. The importance of the Act No. 6 of 1935 on the Administration of Public Education for cultural and educational policy

The implementation of the ideas of national education required the constant control of teachers, for which the school district directors were reliable based on the Act No. 6 of 1935 on the Administration of Public Education. According to this Act (§ 1) the territory of the country was divided into eight district directorates (for example the district directorate of Pécs included Baranya, Bács–Bodrog and Somogy counties, and the cities of Baja and Pécs). The royal district directors were directly under the Minister of Religion and Public Education [§ 3 (1)], thus responded to and reported to him, knowing the local conditions. The competence of the school district directors extended to all educational institutions belonging to their district, regardless of the type and maintainer of the school [§ 3 (2)].<sup>12</sup>

Hóman summarized the purpose of the Act as follows:

*“[...] ensuring the unity of national culture and education, enforcing comprehensive and universal principles of national education in all types of schools, so that the development of national life can be governed in the right direction and the nation can emerge from the now unfortunate economic, social, political and the underlying spiritual crisis.”*<sup>13</sup>

The connection between the new form of public education administration and national education was given by the Minister of Culture himself: “My bill is about public education administration. However, its purpose is in fact a pedagogical, national educational aim.” To achieve this, he felt it was necessary to improve teacher training, constant supervision and control of teaching, and emphasized that “the idea of nursing in education needs to be more highlighted than it has been in recent decades, especially in our youth”.<sup>14</sup> Accordingly, the foundations of national education must be guarded by controlling the work of teachers, so the most appropriate tool for creating an ideology is to reorganize the education administration so that the system is centralized through the district directors, who are directly under the Ministry of Religion and Public Education. Since then, the professional work of the teachers was closely monitored and subjected to continuous qualifications.<sup>15</sup>

By controlling the teaching activity, the State gained the opportunity to ideologically influence the daily life of education, and the denominational schools were also under state control in this aspect. Although § 8 of the Act stated that denominational schools are governed by the competent ecclesiastical authorities in accordance with their own rules, their books and maps were to submit to the Minister before authorization. The Minister also examined whether the curriculum contained doctrines against the State, constitution, or law, and if he found that it was inconsistent with patriotic education in this regard, he could ban the authorization. The Minister had an influence on the curriculum of denomina-

tional schools not only from a national but also from a religious aspect, because if he found that a book contains doctrines against religion or against other denominations, he could examine the book closer with a committee and decide on authorization or prohibition [§ 8 (1)–(2)].

## 3. The effect of cultural policy and the second Jewish law on the schools of Baranya County

This mentioned connection – between national, religious moral education and the reorganization of the educational administration – provided an opportunity for the more effective implementation of the provisions of the so-called Second Jewish Act (Act No. 4 of 1939 on the Restriction of the Public and Economic Progression of Jews) concerning schools, since the school district director – as the extension of the authority of the Ministry of Religion and Public Education – was able to gain the necessary declarations and documents of origin from the teachers faster and more efficiently. The § 1 of the Act defined in detail who are to be considered Jews (§ 1), based on race, and not religion anymore. The § 5 described regulations on schools:

*“Jewish teachers in secondary and elementary schools shall be made to retire by 1 January 1943 [...] or shall be dismissed with dismissal pay in accordance with the relevant rules [...]. These rules are not to be applied for Israelite denominational teachers and employees of the organisations, institutions, and institutes of the Israelite denomination. The Minister of Religion and Public Education is entitled to regulate with decree the number, the organisation, the operation, the supervision of the Israelite schools and seminars of religious teaching, and the teaching of Hebrew subjects in general.”* (§ 5)

The employees of Israelite public educational institutions were not covered by the regulation, as evidenced by the example of József Gerstl, an Israelite denominational teacher in Mohács: he was finalized in his job exactly in 1939.<sup>17</sup>

According to the documents of the School Inspectorate of Pécs and Baranya County in the National Archives of Hungary Baranya County Archives, under the jurisdiction of the School Inspectorate of Baranya, details about Israelite schools in this period can be found in two cases certainly, in Mohács and Siklós. In addition to these, also an archive-based data gathering refers to that in 1943 there were schools maintained by the Israelite denomination in Pécs and Pécsvárad. The Israelite school of Pécs had 6 classrooms in 1922, 4 male and 2 female teachers, 258 students, from which there were 250 Israelites, 1 Roman Catholic, 7 Lutherans, and all of them were Hungarian by nationality. In 1943 although with smaller number but the school still existed: 4 classrooms, 2 male and 3 female teachers, 103 students (102 Israelites and 1 Roman Catholic). However, this year the teaching was likely paused as teachers were recorded as fulfilling labour service. In Pécsvárad an Is-



raelite school still functioned in 1943, although only with 3 students and 1 teacher, while in 1922 there were 10 Israelites and 20 Roman Catholic children in that school.<sup>18</sup> An Israelite school with 1 classroom stood in Baranya County in 1922, but it was ended soon, because it was noted that “On 1. IX. 1922. the teacher has left” – we do not know the circumstances.<sup>19</sup>

The change in the size of the Israelite school of Mohács can be well observed based on archival documents. In 1922 it had 4 classrooms, 70 students (52 Israelites, 11 Roman Catholics, 2 Calvinists, 5 Greek Orthodoxes, according to nationality 59 Hungarians, 5 Germans, 1 Croatian, 5 Serbians), 2 male and 1 female teachers; the language of teaching was Hungarian.<sup>20</sup> This number decreased by the early 1940’s. It is known from a letter dated August 26, 1941, that in Mohács – in addition to the Roman Catholic, the Calvinist and the Serbian Greek Orthodox – there was an Israelite school with 1 classroom and 29 children. The number of compulsory school children in the city was 1290, most of whom attended the Roman Catholic school – with 28 teachers it was quite large –, 78 students visited the Calvinist, 1 the Greek Orthodox school.<sup>21</sup> In 1943 the Israelite school still existed with 1 classroom and 31 students. The teacher was fulfilling labour service,<sup>22</sup> thus, like in Pécs, the children probably did not receive education here either at that time.

Correspondence between ecclesiastical and secular authorities regarding the vacancy of the teaching position provides insight into the affairs of the Israelite school in Siklós.<sup>23</sup> Based on a contemporary handbook about the County of Baranya published ten years after Trianon – regarding only the elementary school level – a Roman Catholic school existed in Siklós in 1929, the date of founding was unknown, its principle was Vilmos Schmidt; a Calvinist school operated since 1860, under the leading of Gyula Toók; and an Israelite school, since 1853, with Lilly Schwelb as the principle.<sup>24</sup> By the end of the 1800’s, the number of children attending the school was more than 100, however, in the 1920’s, the number of students in the school decreased, leading to the withdrawal of State support. Nevertheless, the denominational community continued to maintain the school, making financial sacrifices itself.<sup>25</sup> The reduction continued, in 1922 the school functioned with 2 classrooms, 1 male and 1 female teacher, 37 Hungarian students (25 Israelites, 6 Roman Catholics, 2 Calvinists, 4 Greek Orthodoxes)<sup>26</sup>, in 1931 there were 16 students, in 1943–1944 only 11.<sup>27</sup> At this time just 1 teacher held the lessons, who was away in labour service surely from 1943, maybe from earlier. The language of teaching was Hungarian through the years<sup>28</sup>, which could be important from the aspect of

national education, but there were other considerations as well in this era. László Jakobovics, who was elected to the Israelite elementary school in Siklós as a teacher in 1933, was dismissed in 1936, but not because of his origin – also given that this could not have been done in connection with an Israelite-maintained school anyway – but because of tuberculosis, which was he diagnosed with in 1935 and from which, contrary to expectations, he was unable to return even the following year.<sup>29</sup>

In 1944 – as it is clear from the letter sent to the Ministry of Religion and Public Education by the school inspector of Pécs and Baranya – in the jurisdiction of the school inspector all Israelite schools are registered as schools that does not function including the institutions of Pécs, Pécsvárad, Mohács, Siklós.<sup>30</sup>

Where there were no Israelite denominational schools in the early 1941’s, Israelite students attended schools maintained by the State, associations, municipalities

or other denominations (mainly Roman Catholic or Calvinist).<sup>31</sup>

According to the Decree No. 1172/1940 of the minister for religion and public education on the implementation of the provision § 5 (1) of the Act No. 4 of 1939 on the Restriction of the Public and Economic Progression of Jews in the denominational schools, the restriction has to be applied to the teaching staff of the educational institutions maintained by the Christian denominations as well, so that Jews could not apply not only to the schools of the State, the municipality, but also to the schools of other denominations. The regulations made it clear that a Jew could not enter the service of the State, borough, municipality, any other public body, public institution, or public utility. In order to do so, the applicant had to prove that he or she cannot be considered a Jew based on the Act No. 4 of 1939 and does not fall under the restrictive provisions of the § 1 (6) of the Act.<sup>32</sup> There are numerous examples of this in the archival records. The text of the statement was as follows: “With the burden of criminal law requirements, I declare that I am not considered Jewish based on the § 1 of the Act IV of 1939, and I am not subject to the restriction contained in § 1 (6) of the quoted Act.”<sup>33</sup>

This declaration was usually requested together with the taking of the teacher’s oath, as the regulation stipulated that the proving must take place before entering the public service in any case of hiring (election, contract, assignment, enrolment); the election, contract, assignment, or enrolment of an employee notwithstanding this provision, the hiring shall be null and void. The origin therefore had to be proved in advance, in accordance with the 7720/1939 prime ministerial decree. Accordingly, in addition to the declaration, it



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was required to send a birth certificate of the teacher concerned to the Minister of Religion and Public Education, proving that they were born before October 1 1895, as a member of a Christian denomination; and if they were born after that, had to prove with birth certificates that both of their parents were born as members of the Christian denomination.<sup>34</sup> Based on the practice of Baranya, in addition to submitting his or her own birth certificate and documents certifying Christianity,<sup>35</sup> the birth and marriage certificates of teachers' parents and sometimes grandparents were regularly requested to prove their origin.<sup>36</sup>

Mention of a proof of origin can be found for example in the letter stating that the teacher's parents' marriage certificate can be accepted in such an "irregular form and content", from which it can be inferred without the full knowledge of the circumstances that the document was not formally filed, but probably the content was enough to prove the origin.<sup>37</sup> Similarly, there was a problem with proving the origin of a teacher in Pécs, as she was unable to submit Christian letter of her grandfather on a maternal branch despite repeated urgings, but given that her grandfather's place of birth was in a territory annexed to Romania, this part of the certificate was waived and declared the marriage certificate sufficient evidence. When submitting the teacher's documents to the Public Education Committee of the Administrative Committee of Pécs, the school inspector also confirmed that "It can be established from the documents of origin presented by the applicant that no remark can be made against the application of the mentioned person based on the prohibitions contained in § 5 of the Act IV of 1939", so he also asked the competent authorities to refrain from presenting the grandfather's document.<sup>38</sup>

## 4. Summary

The Christian-national ideology was in the centre of Hungarian cultural policy between 1933 and 1945. Bálint Hó-

man, the Minister of Religion and Education played an important role in the elaboration of the new administrative system for schools. In order to implement the ideas of national education, it was necessary to constantly supervise the teachers. This was performed by school district directors, who were directly responsible and were to report to the Minister for Religion and Education, since they knew the local background, thus they played an important role in the centralization of education.

The Act on Restricting the Activity of Jews in the Public and Economic Fields contained restrictions on schools, though, Israelite denominational schools were not under the effect of these provisions. Based on the documents of the Baranya County Archives of the Hungarian National Archives, this exception affected four Israelite schools within the jurisdiction of the Baranya School Inspectorate: Mohács, Siklós, Pécs and Pécsvárad. However, the restriction extended to schools of other denominations (especially Roman-catholic, Calvinist, Lutheran, Greek orthodox), as well as municipal, community and public schools, in which Jews could not be employed. Therefore, these teachers had to prove their (not Jewish) origin, and we can find in the archives countless examples where documents were necessary (for example a statement that the teacher was not considered Jewish by law, his or her own birth certificate, Christianity certificate, his or her parents' and rarely grandparents' birth and marriage certificate). According to the practice in Baranya County, these documents were regularly requested, as the origin of the teacher had to be verified by the educational authorities before being employed. Yet, no example can be found of a teacher not being employed if his or her origin was not properly verified, nor was he or she later deprived of his or her job for such a reason. Based on the aforementioned, it can be concluded that the educational authorities of Baranya tried to act fairly in the given circumstances, and sometimes they were satisfied with less evidence of the teacher's origin.

## Notes and references

- 1 Speech of Bálint Hóman in the House of Representatives, 31. 5. 1933. In MANN, Miklós: *Oktatáspolitikusok és koncepciók a két világháború között [Educational politicians and concepts between the two world wars]*. Budapest, 1997. Országos Pedagógiai Könyvtár és Múzeum, 103.
- 2 Bálint Hóman was the Minister of Religion and Public Education: 1. 10. 1932–14. 5. 1938 and 16. 2. 1939–3. 7. 1942 during the Gömbös-, Darányi-, second Teleki-, Bárdossy- and Kállay-governments, see BÖLÖNY, József: *Magyarország kormányai 1848–1975 [Governments of Hungary 1848–1975]*. Budapest, 1978. Akadémiai Kiadó, 67–70.
- 3 A kultúrfejlődés és a jellemnevelés [Cultural supremacy and character education]. *Néptanítók Lapja [Teachers' Journal]*, No. 2, 1934. 41.
- 4 Budapest, 29. 12. 1885 – Vác, 2. 6. 1951. See Hóman's CV. In HAEFLER, István (ed.): *Országgyűlési Almanach az 1939–44. évi Országgyűlésről [Almanac of the Parliament of 1939–44]*. Budapest, 1940. 196–200.
- 5 DROZDY, Gyula: Gróf Teleky Pál – Hóman Bálint [Earl Pál Teleky – Bálint Hóman]. *Néptanítók Lapja [Teachers' Journal]*, No. 5, 1939. 150.

- 6 See MANN 1997.; UJVÁRY, Gábor (ed.): *Történelmi ártértelezés: Hóman Bálint, a történész és a politikus [Historical reevaluation: Bálint Hóman, the historian and the politician]*. Budapest, 2011. Ráció Kiadó.
- 7 See UJVÁRY, Gábor: *Hóman Bálint és népbíróági pere [Bálint Hóman and his case at the people's court]*. Budapest, 2019. Ráció Kiadó.
- 8 See HÓMAN, Bálint: *Magyar sors – magyar hivatás [Hungarian fate – Hungarian profession]*. Budapest, 1942. Atheneum Kiadó; Idem: *Művelődéspolitika [Education policy]*. Budapest, 1938. Magyar Történelmi Társulat; MANN 1997. 79–126.
- 9 See NIKLAI, Patrícia Dominika: Iskolák a Tanácsköztársaság idején és a baranyai felekezeti tanítók felelősségére vonása [Schools during the Council Republic and the prosecution of denominational teachers in Baranya County]. *Diké*, No. 1, 2020. 127–148.
- 10 NAGY, Péter Tibor: *A növekvő állam árnyékában. Oktatás, politika 1867–1945 [In the shadow of the growing state. Education, policy 1867–1945]*. Budapest, 2011. Gondolat Kiadó, 249.
- 11 Further oaths see Magyar Nemzeti Levéltár Baranya Megyei Levéltára [National Archives of Hungary Baranya County Archives] (MNL BaML) VI. 502. Bvm. és Pécs v. Tanfelügyelőségének iratai [Documents of the School Inspectorate of Pécs and Baranya Coun-

- ty] 1496/1942, 1614/1942, 1940/1942, 2017/1942, 2090/1942, 2254/1942, 2802/1942, 3753/1942, 3241/1943.
- <sup>12</sup> KELEMEN, Elemér: *Hagyomány és korszerűség. Oktatáspolitikai a 19–20. századi Magyarországon [Tradition and modernity. Education policy in Hungary in the 19–20<sup>th</sup> centuries]*. Budapest, 2002. Új Mandátum Könyvkiadó, 50–51.
- <sup>13</sup> JÓBORÚ, Magda: *Köznevelés a Horthy-korszakban [Public education in the Horthy-era]*. Budapest, 1972. Kossuth Könyvkiadó, 203.
- <sup>14</sup> *Ibid.* 204–206.
- <sup>15</sup> KELEMEN 2002. 50–54.
- <sup>16</sup> <https://nepszava.hu/i/10/8/0/221477.jpg>.
- <sup>17</sup> MNL BaML VI. 502. Bvm. és Pécs v. Tanfelügyelőségének iratai [Documents of the School Inspectorate of Pécs and Baranya County] 877/1939.
- <sup>18</sup> LAKI, János: A népispolák fejlődése, illetve stagnálása a két világháború közötti Baranyában [The development and stagnation of schools in Baranya between the two world wars]. In SZITA, János (ed.): *Baranyai helytörténetírás [Local historiography of Baranya]*. Pécs, 1983. Baranya Megyei Levéltár, 244–245.
- <sup>19</sup> *Ibid.* 236.
- <sup>20</sup> *Ibid.* 240.
- <sup>21</sup> MNL BaML VI. 502. Bvm. és Pécs v. Tanfelügyelőségének iratai [Documents of the School Inspectorate of Pécs and Baranya County] 1675/1942.
- <sup>22</sup> LAKI 1983. 240.
- <sup>23</sup> MNL BaML VI. 502. Bvm. és Pécs v. Tanfelügyelőségének iratai [Documents of the School Inspectorate of Pécs and Baranya County] 2899/1933.
- <sup>24</sup> DR. MATOLAY, Károly – ZSADÁNYI, Oszkár (ed.): *Baranya vármegye Trianon után tíz évvel [Baranya County ten years after Trianon]*. Mohács, 1930. 46.
- <sup>25</sup> RADNÓTI, Ilona: Siklós zsidósága a 18–20. században [Jews of Siklós in the 18–20<sup>th</sup> centuries]. In NAGY, Imre Gábor (ed.): *Baranyai történelmi közlemények 2. A Baranya Megyei Levéltár Évkönyve 2006–2007 [Publications on the history of Baranya 2. Yearbook of the Baranya County Archives 2006–2007]*. Pécs, 2007. Baranya Megyei Levéltár, 317–319.
- <sup>26</sup> LAKI 1983. 248.
- <sup>27</sup> RADNÓTI 2007. 317–319.
- <sup>28</sup> LAKI 1983. 248.
- <sup>29</sup> MNL BaML VI. 502. Bvm. és Pécs v. Tanfelügyelőségének iratai [Documents of the School Inspectorate of Pécs and Baranya County] 908/1936.
- <sup>30</sup> *Ibid.* 2773/1944.
- <sup>31</sup> See LAKI 1983. p. 221–253.
- <sup>32</sup> A vallás- és közoktatásügyi miniszternek a zsidók közéleti és gazdasági térfoglalásának korlátozásáról szóló 1939.IV. t.-c. 5. § (1) bekezdésében foglalt rendelkezésnek az egyházi hatóság alatt álló tanintézeteknél való végrehajtásáról elnevezésű 1940. évi 1.172. Eln. számú rendelete [Decree No. 1172/1940 of the minister for religion and public education on the implementation of the provision § 5 (1) of the Act No. 4 of 1939 on the Restriction of the Public and Economic Progression of Jews in the denominational schools].
- <sup>33</sup> MNL BaML VI. 502. Bvm. és Pécs v. Tanfelügyelőségének iratai [Documents of the School Inspectorate of Pécs and Baranya County] 2032/1940, 1313/1942, 3001/1942, 3241/1943.
- <sup>34</sup> Decree No. 1172/1940 of the minister for religion and public education.
- <sup>35</sup> MNL BaML VI. 502. Bvm. és Pécs v. Tanfelügyelőségének iratai [Documents of the School Inspectorate of Pécs and Baranya County] 564/1943, 3241/1943, 3539/1943.
- <sup>36</sup> *Ibid.* 3001/1942, 2143/1942, 3753/1942, 564/1943, 3241/1943, 3539/1943.
- <sup>37</sup> *Ibid.* 618/1942.
- <sup>38</sup> *Ibid.* 3539/1943.



The most significant aspect of the cartel movement of the 20<sup>th</sup> century lies within the paradox of free competition, for mandates regulating free competition came to be as the result of free competition itself. The only line of defence for the interests of consumers against the aforementioned mandates was the guarantee of the freedom of competition. As a part of the European codification process, the regulation of cartel law, basically cartel public law was introduced by the Act No. 20 of 1931, in which the emphasis was put on national intervention efforts. A unified regulation of cartel private law was scrapped, and due to its omission, the general rules of private law, especially commercial law served as guidelines for the practitioners of law.

## 1. The problem with the regulation of cartel public and private laws

Knowing the contemporary affairs of private law codification, one must state that the role of courts grew significantly in this era, especially in connection to the establishment of legal security and legal unification. This was prevalent after the beginning of the Great War, for the Curia attempted to reflect upon the legal problems that arose due to the war. Due to the lack of a private law codex, the courthouses were tasked

Varga, Norbert

## Between Public and Private Law: The Foundations of the Regulation of the Hungarian Cartel Law of 1931\*

with the decisions in cartel cases based on pre-existing legal precedents. However, it must be stated that even the Act No. 37 of 1875, the so-called Commercial Law did not provide ample legal basis, “nor ample analogy, therefore the courts used the ancient sources of law, fairness and equity to create legal practices for cartels”.<sup>1</sup> § 6 of the private law bill of 1928 also cites this task of the courthouses by stating that “in legal matters not settled by law, courts should reach a verdict by taking the spirit of our country’s law, the general principles of law and scientific statements into account”.<sup>2</sup> Apart from the legal development actions of courthouses, the government

also had to see to the regulation of cartel law in the first half of the 20<sup>th</sup> century, for the judicial practices of courthouses had less and less effect on economic progression.

The differentiation between cartel private law or, to be more precise, cartel law of public interest and private law only became truly significant after the Cartel Law came into effect. The cartel law basically regulated cartel public law and overshadowed the regulation of cartel private law. This was the specific wish of the legislator, for it only specifically regulated cartel public law in the act.

I agree with the statement of Sándor Kelemen, according to which our law stopped halfway through, for “true legal problems arise specifically in cartel private law”.<sup>3</sup> It can also be stated that the operations of cartels resulted in public wrongs most of the time, therefore the regulation or more specifically, the establishment of cartel public law turned out to be vital. By examining the contemporary economic relations, it can be stated that in this area such agreements, cartels were established that private individuals would have been unable to act against their impositions. Therefore, it was necessary that the authority of the state should carry its point against the impositions of the cartels if public interests were on the line. However, this also meant that intervention due to public interests was more of a matter of power, therefore a political matter and not a legal problem for the government. The question was what the regime could do in this situation, whether it was willing and capable of wielding an effective tool to regulate economic conditions.

Where did cartels and public interests connect? By looking at the matter from the perspective of public interests, we can say that the matter of cartels is basically none other than the matter of prices.

*“Consumer Vendel Savanyú has no legal problems, his only interest lies in the question of whether when he puts on his ragged shoes in the morning to take them to the cobbler for soling, does the asking price contain the overly priced shoe leather of the cartel? When he sits down to have breakfast and contemplates the prices of milk and sugar, he wishes to know whether the overwhelmingly high number is the result of a certain cartel’s price formation? Or if he stops for a pint of beer after work, does its price contain the expenditures of a campaign against a competitor outside the cartel?”*<sup>4</sup>

As the example shows, the matter of whether cartel matters mean the examination of pricing matters lies within whether the cartel abuses its monopolistic situation to force the consumer to pay an excessive price.

This is validated by the statement of Baron Zsigmond Perényi published by the *Pesti Hírlap* [Pest Newspaper] on 17 February 1933, according to which he expressed his opinion on the topic of the task of the Cartel Committee as its point is “the examination of price formation and enforcing sufficient actions and the creation of edicts if deemed necessary”.

Naturally this is an overly simplified answer to the question if we look at it from the point of view of public interests, for the law was not only for regulating price formation,

but also several other complaints of public interests (for example, presentation omission) apart from the reduction of excessive prices.

Even in cartel private law, one can discover several legal problems that affected public interests. Like boycotts that caused private law grievances to the boycotted individual, for stopping his industry practices caused financial losses. Although this topic had direct ties to public interests, for the stoppage of industry practices was against public interests. These cases where the private law grievance fell into the same “formal set” as public grievances the cartel law pushed completely into the background, for it did not provide an opportunity for individual participants to express their needs in lawsuits held in the Cartel Court.<sup>5</sup>

However, the cartel law regulated the cartel matter in connection to public interests by completely removing private individuals from the cases, shrinking its role to turn to the minister of economy with his grievances, although the consideration fell under the jurisdiction of the minister without any contradictory procedure or hearing.<sup>6</sup> The decision to initiate a lawsuit of public interest fell solely to the minister and could order the royal legal director to initiate the proceeding.<sup>7</sup> The private individual who provided the data was excluded from this lawsuit. Therefore, the statement that cartel matters were nothing more than pricing matters according to the public rings so true. However, fundamentally this isn’t a legal matter for prices were formed by experts according to government arrangements. “Therefore, the deciding political question was whether or not the government possesses enough independency and power to force the agents of private economy to take public interests into account.”<sup>8</sup>

The regulation of cartels should basically be understood by looking at it from the perspective of governmental power. For example, the government strove not to increase coal prices or heating bills, which was exponentially significant in connection to consumers, according to some specific examples in the case of the coal cartel, for the Cartel Court dabbled in answering questions of cartel private law. The respondents formed an agreement on 28 December 1928 and 1 January 1929, according to which from the 1<sup>st</sup> day of January 1929 all the way to the 30<sup>th</sup> day of January 1932, establishing regulations binding all parties in connection to the acquisition of firewood, coal, coke and smithy coal, and also the sale in and around the town of P. [Pápa], determining the sales prices and sales conditions of the products, and also in connection to the methodical turnover and payoff of the commerce, and mutual customer protection. This agreement of the respondents did not refer to the opportune arrangement of the transactions, but rather to determine the actions of the participants for a longer period. The obvious purpose of the mutual commitments the participants undertook in the agreement was to regulate economic competition in connection to said products in connection to turnover and price formation. In its decision, the Cartel Court stated that “such an agreement, without taking its personal, economic, or geographical measure into account, falls under § 1 of the Act No. 20 of 1931”.<sup>9</sup> Commercial associations also participated in the establishment of the agreement; therefore, according to the reasons listed in connection to the aforementioned case, it should have been

presented to the secretary, but this was also omitted. According to § 2 of the Cartel Procedure Law, the agreement had lapsed, and even the fact that after a secretarial summons, the secondary co-defendant fulfilled the presentational obligation on 1 September 1932. “For a belated presentation does not validate a case invalidated due to the failure to adhere to the legally pre-established deadline.”<sup>10</sup>

According to Lajos Gavallér, cartel public law, more specifically, the representation of public interests against the power of the cartels was deemed to be a more vital task than against private interests, for consumers do not care if one of them renders an outsider company impossible but whether the government is strong enough to stand its ground against a cartel and stop sharking abuses. Therefore, the public law part was regulated in the act. However, if one is looking for real legal questions, one must investigate cartel private law.

*“The aim of the unity of legal theory and judicial practices is to separate how far the freedom of contract of individuals reaches, therefore how long can one legally refuse to serve products to individuals he does not like, but where does the protection of industry practices of individuals begin where the denial of business relationships is considered forbidden boycott.”<sup>11</sup>*

Simply regulating cartel public law, specifically settling the case of interjection for public interests, and not taking cartel private law into account was as unsatisfactory solution. Interjection for public interests is purely a power struggle between the government and a cartel: “our cartel law which gave more authorities to the government possessing every available tool of control is basically selling sand to Arabs”.<sup>12</sup> However, it left the relationships of the cartel and its members, its competitors or even its consumers unregulated. Because of this, legal mandates created opportunities for state intervention. According to the rules of contemporary private law and economic law, the regulation of cartels proved to be cumbersome, for regulating it as some sort of company statuses. Commercial companies and cartels have different economic backgrounds and target audiences. “Cartels grew over the private and commercial law company statuses.”<sup>13</sup> Let’s take, for example, public limited liability companies into account, where three interested parties prevail: the company and the state, the company and every other private law entities and the company and its members. Although cartels are built up in a similar fashion, but these represent much wider areas. Significant changes came into effect on the relationship of the cartels and the state, especially in connection to the rights and obligations of the state. This can also be stated referring to cartels and private law entities, but legal relations shifted between the cartel and the supplier, the consumer or even the trader.

*“Cartel regulation according to contemporary private law and commercial law in a way that takes laws currently in effect and also the greater economic significance of cartels, today’s hochcapitalism, the separate lives and requirements of contemporary economic organisms into account is simply not possible.”<sup>14</sup>*

To put it bluntly, private law is a legal system built upon free competition with rules protecting individuals from individuals. According to Gavallér, in cartel law, the interests of communities clashed with the interests of other communities which would have needed a so-called “social private law” for mediation. Since contemporary private law would have been unable to stand up to cartels, the regulation of state intervention seemed like an obvious answer, therefore making a matter of public law from this legal regulation. The next step of this regulation is to deal with cartel problems on a private law level. The Cartel Court and the Cartel Committee were tasked with aiding the rational development of cartels, and

*“promoting their extension according to our contemporary mandates of private law based on a shifting sense of justice due to legal precedents, with social purpose and promoted by today’s organised economic life [...] a legal construction must be established in which all of its dangerous excursions would be rendered impossible”.<sup>15</sup>*

“However, cartel private law might be considered a legal problem, and those are completely missing from the act. General principles of private law had to be taken into account, such as the nullification of agreements that are against common morals or the inviolability of the freedom of industry practices.”<sup>16</sup> The private law segment of cartel law “is a fallow itself, overran with the weeds of legal insecurities and waiting for legal tilling”.<sup>17</sup>

From the point of view of cartel law, there are two separate groups of private law relations. On one hand, if they regulate internal legal relationships, meaning they settle the relationship of the cartel members and the cartel itself. On the other, there are the agreements between cartels and competitors outside the cartel and the consumers. In both cases, a wide array of legal problems might arise, and the participants agree as a sort of “peace treaty” to eliminate them. Members of the cartel reach agreements with each other to confront competitors more effectively, which can give birth to conflicts.

The so-called “internal” conflicts mainly happen due to the circumvention of the mandates of cartel contracts. In this sense the most significant problem was whether the cartel contracts between parties remained valid. In what cases a valid cartel contract can be nullified according to the principle of *pacta sunt servanda*.<sup>18</sup>

Due to the specific nature of cartel contracts, in most cases the contracts were filled with so-called blank contents, and because of these, the actual contents continuously changed. The easiest method of confirmation is by price cartels. In the cases of such cartel contracts, it is an extremely rare occasion to find an example of a mandatory obligation to keep to specific prices to the whole span of the contract. Instead of this, they established a leading organisation that met at set occasions to establish prices according to market ratios. This meant nothing more and nothing less than the cartel contract only obligated the elimination of competition via keeping the set prices established by the competitors from time to time. These cartel contracts were general agreements.<sup>19</sup>

At times, competitors established a joint sales office to move the merchandise, and entered into an exclusive agree-

ment with said office to sell their merchandise to this joint sales establishment. In this case, either the office or one of its bodies was given the task of price formation by taking market into consideration.

The official paperwork of Victoria Chemical Works Plc. contains the cartel contract that regulated the operation and organisation of the cartel.

In this cartel contract, the participants (Dezső Drucker Pallas Chemical Plant [Pallas Vegyészeti Üzem], United Incandescent Lamp and Electronic Plc. [Egyesült Izzólámpa és Villamossági Rt.], Chemical Factory [Vegyészeti Üzem], Tivadar Helvey DChem's Chemical Plant [Vegyészeti Üzem], Miklós Rosenberg's Chemical Plant [Vegyészeti Üzem], Ernő Rudas Concordia Chemical Industry Plc. [Concordia Vegyészeti Ipar Rt.], The First Sand Lime Brick Factory of Soroksár Plc. [Első Mészhomok Téglagyár Rt.] and the Victoria Chemical Works [Victoria Vegyészeti Művek) settled that, among other things, that the Hungarian Industrial and Commercial Bank Plc. is exclusively responsible for the commission sales of soluble glass (sodium silicate), not to mention they entered into an agreement on the monitoring and Treuhand-tasks,<sup>20</sup> according to which the bank accepted the commission, the monitoring and the Treuhand-assignment.

## 2. One of the main issues of cartel private law: regulating boycott

Boycott regulation turned out to be an even more significant problem of cartel private law. Here, basically the same principle should be accepted, namely that boycott as a solution could only be considered a legal solution in well-founded cases. One example of boycotts was when it hampered joining attempts and impeded industry practices. Most of the times, these agreements were attempted to get across under the banner of "releasing unfitting participants of the market".

Only certain companies and merchants could circulate certain products. The merchants' aim was to rid the market of forced agreements and bankruptcies.<sup>21</sup> However, the situation changes from the point of view of the boycotted. This practice also stopped those individuals from performing their industry practices who managed to acquire licenses with obeying law enforcement and administrative rules. Despite this, any practice of boycott endangered their livelihood and existence. "Therefore, two immeasurable points of view clash here, the freedom of contract on one hand and the freedom of industry practices on the other! The incompatibility of these two points of view defines the problem of the permissibility of boycotts."<sup>22</sup>

Amongst the cartel supervisory agencies<sup>23</sup> the Cartel Committee dealt with boycotts in a more thorough manner. On the session of 20 October 1933 of the Cartel Committee, the items of the agenda included the discussion of the mandates of isolation and exclusion of cartel contracts which the cartels enforced upon non-paying customers.

The Committee's session was opened by President Béla Ivády who then asked committee member Károly Dobrovics to announce the draft of presentation. Dobrovics began his

presentation with the description of the precludes of the case and stated that the matter of isolation arose in several specific cases in front of the former Cartel Committee. The cartel contracts contain clauses on the cartels' actions against non-paying customers. After the introduction of this item of the agenda, Miksa Fenyő introduced his statement in which he asked the committee to delay the discussion of the item of the agenda for he made the case that there is simply not enough practice for the objective and thorough judgement of the matter. Fenyő wished to supplement his statement by quoting the German cartel edict's mandates on boycott and isolation, according to which our nation's cartel law deliberately lacked any mandates on this topic.

According to his statement, the Cartel Committee did not possess enough practice yet. Fenyő explained that

*"a lengthy waiting and examination period is necessary with the reform of genuinely significant acts in order to determine how they adapt to everyday life and how they affect production and economic life as a whole, just look at the Commercial Act, one of the most vital chapters of our nation's economic life, which required 50 years of practice".<sup>25</sup>*

Therefore, Miksa Fenyő's statement of principle stated in connection to the aforementioned matters that the Cartel Committee did not possess the necessary practice and experience, not to mention that the history of cartels is not an especially lengthy one. He emphasized that the only thing that began later than the effect of the cartels' practical actions was the Committee's time spent on dealing with these matters and mandates.

*"I'm not stating that these are questions we should ignore, but since every day there is a new case, and even more shall happen in the future that touch upon mandates directly related to boycotts, my suggestion would be to state graciously whether the Cartel Committee, in theory, does not deem the matter necessary to deal with."<sup>26</sup>*

After this statement, Fenyő made a promise that the Cartel Committee shall always examine in every specific case whether the case brought forward is against Section No. 6 of the Cartel Law.

To supplement his statement, Miksa Fenyő elaborated that he thinks the Cartel Law does not wish to deal with boycotts specifically. In connection to this statement, it is noteworthy that at the time the Cartel Law was established, it has been over five years since § 9 of the German cartel edict quoted by the minister of agriculture was in use. This fact allowed Fenyő to deduce that adopting this section might not have escaped the attention of Hungarian codifiers, the Ministry of Commerce or the Industry Council, but they simply deemed the application of this section as unnecessary due to the conditions prevalent in Hungary.<sup>27</sup> In connection to this, it can be stated that in this sense, the Hungarian Cartel Act doubtlessly bypassed German practices, despite the fact that our Cartel Act adopted a significant amount of the German cartel edicts. The Hungarian act summarized retaliation measures in § 6,

and in it, it did not deem necessary to establish specific actions for boycott and isolation.

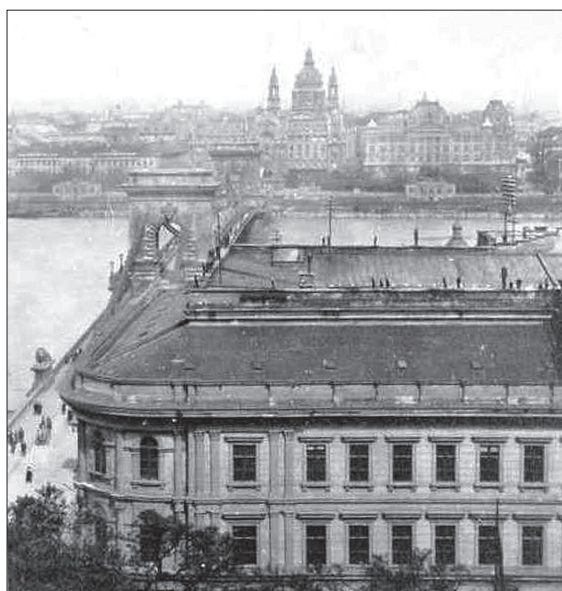
According to the general consensus, the Hungarian act emphasized public interests over private interests. In contrast to this, the German edict contains a specific mandate to ensure the protection of private interests. "If an individual's freedom of economic movement is hampered unjustly, the German act allowed interfering rights to the individual, not to mention it deemed secession to be acceptable if the circumstances were justifiable."<sup>28</sup> The Hungarian act did not adapt this. According to the mandates of the Cartel Law, only the minister of commerce and the minister of economy submitted cases to the Cartel Committee and listing the types of these cases exhaustively. According to this, it can be deduced that the Cartel Law specifically wished to avoid the opportunity of bringing a case to the Cartel Court due to a complaint of a private individual.

Committee member Ferencz Marschall joined Heller's point of view and stressed that cartel clauses containing mandates of boycott and isolation might still be against public well-being and public interests, therefore the matter requires the utmost attention of the Cartel Committee. He underlined that even though no specific complaints surfaced in connection to this matter, the question should not be swept under the rug, not to mention mandates that could result in an individual's economic destruction or his economic status to be rendered impossible are simply unacceptable.

In his comment, Ferencz Marschall expressed that in everyday life clauses in connection to boycotts were not exactly common yet based on everyday practices he figured that "certain organisations" were more than keel to use it. According to his testimony companies that made use of such agreements and clauses generally used the reasoning that the manufacturer or consumer had the opportunity to turn to another company who would supply them with their products no questions asked.

*"Yet by considering that the Cartel Committee reasoned that it gives a votum for its application and understanding, we can only consider this question de lege lata. If we consider this case from this perspective, we should first and foremost bring forward § 6 of the Act No. 20 of 1931 that inhibits all mandates that endanger the interests of public economy or public well-being. Here it states that its existence, meaning every cartel clause should be judged according to its expected effect."*<sup>29</sup>

Marschall's opinion states that accepting an isolation clause based on the pretence that the isolated party still might have



*The Royal Hungarian Ministry of Commerce, the first venue of the Cartel Committee meetings<sup>24</sup>*

an opportunity to purchase the goods outside of the cartel is in no shape or form acceptable according to the intentions of the law. According to Marschall, definite action is also needed in cases of contracts and clauses when an unpunctually paying customer is not allowed to receive goods in exchange for cash. His opinion states that these are harmful for public well-being and public morals, therefore these actions should be considered contestable. He wished to join one of Heller's statement, namely that the Cartel Committee must express an opinion in this matter and avoiding said statement would be a mistake just because the Committee did not receive concrete complaints.

*"Yes, we should make a statement of principle on this point, I consider the old Cartel Committee's statement on these cases to be a statement of principle and we should move beyond that and say that we consider such clauses to be by all means inhibiting if there is an existence on the line."*<sup>30</sup>

As the representative of the Hungarian Royal Legal Directorate, Antal Serly also supported Farkas Heller's standpoint. Serly expressed that he believes that the aforementioned item of the agenda is in fact vitally important, a so-called backbone of the whole cartel existence, therefore a statement of principle should definitely be accepted. He also referred to the fact that so far, only courts of arbitration dealt with this matter, therefore the statement of principle the Cartel Committee makes should be applicable.

Antal Serly deemed the discussion of this matter substantial because the legal directorate played an extremely significant role in the execution of the law. He stated that in connection to the execution of the law, the legal directorate is especially interested in the statements of principle the Cartel Committee establishes. "The first item of today's list of today's agendas is vitally important for all cases, shall we say, the backbone of all cartel life. Therefore, if I may express my humble opinion, the Cartel Committee should definitely accept a statement of principle."<sup>31</sup> Serly expressed that if the Cartel Committee wishes to reach a verdict in a certain case, the prior acceptance of a statement of principle is definitely unavoidable in order to serve as a guideline to make a decision. Serly expressed that according to the practice established based on the act on unfair competition resulted in resolutions that severely oppose contemporary legal principles. He pointed out that in 1927 one of the decrees of the court of arbitration of the Chamber of Commerce and Industry stated that even the destruction of competitors is allowed in business competition.<sup>32</sup>

*“In essence, Hungarian court never even dealt with this topic, only courts of arbitration. Therefore, if the Cartel Committee wanted to establish a statement of principle in this matter, my humble opinion is that it should definitely keep that in mind, and this statement of principle should express an opinion that hopefully will be acceptable for Hungarian courts.”<sup>33</sup>*

Keeping all that in mind, Antal Serly as the representative of the Legal Directorate wished to support the suggestion brought forward by Farkas Heller. “The statement brought forward by His Excellency Heller does manage to find a middle ground and in the case of its acceptance the Cartel Committee would have a solid foundation to set foot on in each case.”<sup>34</sup>

After the statement, Miksa Fenyő expressed his fears that if the Cartel Committee would accept a statement of principle on the matter of cartel contracts containing clauses of boycott and exclusion, it could happen that “in a specific case, they would find themselves on the side that is against the interests of public well-being and the economy even if the cartel only manages to peel away half of the individual’s whole existence”.<sup>35</sup> Therefore he did not deem stipulating necessary and found § 6 of the Cartel Law to be perfectly adequate.

In order to react to the suggestions and concerns of Fenyő, Farkas Heller described that should the Cartel Committee chose to decide solely based on the general mandates of § 6, then the Committee would never be able to move forward in cartel matters and would never stop examining individual cases instead of making time to establish standpoints of principle within the framework of the law. According to Heller’s opinion, this is exactly what business life needed. By forming statements of principle, business life would see the frameworks within which it could move freely without crossing lawfully established boundaries clear as day. Farkas Heller came forward with the following suggestion.

*“Exemption, isolation or boycott from business relations are exceptionally sharp weapons of economic struggles which might affect the economic prosperity and even economic life of certain individuals deeply. Therefore, the Cartel Committee relies of § 6 of the Act No. 20 of 1931 to only deem these tools acceptable to use within the interests of the economy and public well-being if there exist a valid reason of general interest for their application. The Cartel Committee deems it against the interests of the economy and public interests if isolation is not only meted out to the participants due to economically reasonable drawbacks but downright capable of the destruction of its economic existence. The Committee wishes to assess each case separately to determine whether or not this endangerment holds true.”<sup>36</sup>*

The proposition submitted by Farkas Heller and modified by Miksa Fenyő was accepted by the Cartel Committee unanimously.

The following paragraph is a detailed example of the outsider’s boycott with the case of the carbonated water cartel.

The cartel of carbonated water makers and carbonated water equipment and component making machine industrialists entered into an agreement to engross all its components and

machine needs at the cartel in advance, meanwhile the cartel engaged itself not to set up competitors in certain areas. To put it bluntly, this meant that if an individual would contact one of the cartel members to set up a soda-water factory around certain parts, this commission would have been forbidden to accept under the penalty of 20 000 Pengős. One of the members of the agreement almost instantly, right after the contract was signed accepted and delivered an order of a carbonated factory machine close to the plant of the carbonated water maker. Soon after, heated competition broke out between the two carbonated water factories that resulted in the price of carbonated water sharply declining. The aggrieved party filed for penalty to reimburse its damages due to the pricing competition. At the end, the lawsuit was avoided by the participants’ agreement. As it was finally established, apart from the five companies that formed the cartel there was another company producing machines for carbonated water factories. The penalized respondent machine industrialist justified himself by stating that the penalty is used to strengthen an agreement that harms public morals, therefore it is invalidated. “Since the agreement that in a certain area only a certain company should be allowed to produce carbonated water and nobody else is allowed to set up shop in said area – is against the freedom of industry practices.”<sup>37</sup> However, the cartel contract did not specify whether an entrepreneur can establish a carbonated water factory, only from who he can buy the equipment. Apart from the machine industrialists in the cartel, there were companies all over the nation that produced factory machinery and would have been allowed to sell the components. The defence also stated that the companies unified by the cartel produce the best quality equipment, but this did not affect the merits of the case. The final verdict turned out to be that since the five companies unified in the cartel did not monopolise the market that satisfies this specific need, therefore signing the contract was not an obligation.<sup>38</sup>

### 3. Summary

In the field of cartel private law, various other problems could arise apart from the ones that the law did not have clauses for, for the act’s only concern was cartel public law. This resulted in a fundamental legal uncertainty in cartel law, therefore it would have been easier to regulate cartel private law as well. In this case, judicial legal practice became the decisive factor, for by taking into the general rules of private law, it shall deal with any legal problems that arise within the field of cartel private law.

The nominal reason of state intervention in private law relations in the period after the war was the transformation of economic relations. In my opinion this resulted in even more problems that touches upon the protection of fundamental rights, the separation of powers and all in all, the existence of constitutionality.

To sum it all up, it can be stated that the regulation of economic relations within the Cartel Act happened in order to protect public interests, however, it did not interfere with the development of free competition and economic development. “The crack of arms does not only silence poetry, but the purity of legal development also weakens in the current economic distress.”<sup>39</sup>



## Notes and references

- \* The project is supported by the National Research, Development and Innovation Fund of the Ministry for Innovation and Technology based on the support contract issued by the NRDI Office. Title of the project: Development of the private law in the interwar period. No. of the project: 138618.
- <sup>1</sup> TUNYOGI SZÜCS, Kálmán: A kartell törvény előzményei és alapelvei [Antecedents and Fundamental Principles of the Cartel Act]. *Karteljog Tára [Antitrust Law Repository]*, No. 4, 1931. 53.; ALMÁSI, Antal: *A háború hatása a magánjogra [The Effects of the War on Private Law]*. Budapest, 1917. Magyar Jogászegylet Könyvkiadó Vállalata, 8.; HOMOKI-NAGY, Mária: Megjegyzések a kartellmagánjog történetéhez [Comments on the History of Cartel Private Law]. *Versenytitükör [Competition Mirror]*, Különszám II. [Special issue II], 2016. 41.
  - <sup>2</sup> A kartel. *A Magyar Jogászegylet Gazdaságjogi Intézetének 1929. évi május hó 8-án, 14-én és 16-án tartott vitája, [The Cartel. The Debate of the Hungarian Lawyers' Association's Institute of Economic Law on 8<sup>th</sup>, 14<sup>th</sup> and 16<sup>th</sup> May 1929]*. Budapest, 1930. Magyar Jogászegylet, Budapest, 1930.33.
  - <sup>3</sup> KELEMEN, Sándor: Karteljogi problémák [Problems of Cartel Law]. *A Kartel [The Cartel]*, No. 2, 1933. 9.
  - <sup>4</sup> Ibid.
  - <sup>5</sup> SZABÓ, István: Kartellbírótság (1931) [Cartel Court (1931)]. *Jogtörténeti Szemle [Review of Legal History]*, No. 1–2, 2017. 111–118.
  - <sup>6</sup> HARASZTOSI KIRÁLY, Ferenc: *A kartel [The Cartel]*. Budapest, 1936. Grill Károly Könyvkiadóvállalata, 532.
  - <sup>7</sup> A kartell törvény alkalmazása. Kartellszerződés fogalma [The Application of Cartel Law. The Concept of Cartel Contracts]. *Közgazdasági Értesítő [Economic Bulletin]*, No. 39, 1937. 7–8.; DOBROVIC, Károly: Kartellmegállapodás és kartellműködés [Cartel Agreements and Cartel Operations]. *Közgazdasági Értesítő [Economic Bulletin]*, No. 40, 1933. 16.; STIPTA, István: A gazdasági versenyt szabályozó megállapodásokról szóló 1931. évi XX. tc. hazai előzményei [Domestic Predecessors of the Act No. 20 of 1931 on the Agreements Regulating Fair Trade]. *Versenytitükör [Competition Mirror]*, Különszám II. [Special Issue II], 2016. 61–62.; DOBROVIC, Károly: A közérdekű per [The Lawsuit of Public Interest]. *Közgazdasági Értesítő [Economic Bulletin]*, No. 23, 1932. 14.
  - <sup>8</sup> KELEMEN 1933. 10.
  - <sup>9</sup> P. IV. 5261/1932. In KOCSÓH, Bálint – NIZSALOVSKY, Endre – PETROVAY, Zoltán – TÉRFY, Béla (eds.): *Grill-féle Új Döntvénytár [The Grill's New Case-Book]*. 1933–1934. Vol. 36. Budapest, 1935. Grill Károly Könyvkiadóvállalata, 740–741.; KÓHÁZI, Endre: Karteljogi bírói gyakorlat [Judicial Practices of Cartel Law]. *Közgazdasági Értesítő [Economic Bulletin]*, No. 15, 1934. 8–9. To the history of the coal cartel: VARGA, Jenő: *A magyar kartellek [The Cartels in Hungary]*. Budapest, 1956. Szikra; KÖVÉR, György: Elmélet és módszer a legújabb gazdaságtörténet-írásban [Theory and Method in the Newest Writings on Economic History]. *Aetas*, No. 1–2, 1999. 292–293.
  - <sup>10</sup> The Cartel Court referred to the aforementioned case of P. IV. No. 3013/1932. In P. IV. 5261/1932. The Grill's New Case-Book, Vol. 36, 740–741.
  - <sup>11</sup> GAVALLÉR, Lajos: Ismét előtérben a kartellkérdés [Cartel Matters Get Back in the Limelight]. *A kartel [The Cartel]*, No. 5, 1933. 38.
  - <sup>12</sup> Ibid. <sup>13</sup> Ibid.
  - <sup>14</sup> Ibid. 39.
  - <sup>15</sup> Ibid.
  - <sup>16</sup> MENYHÁRD, Attila: *A jóerkölsbe ütköző szerződések [Contracts Contrary to Good Morals]*. Budapest, 2009. Gondolat Kiadó, 71–81.; KRUSÓCZKI, Bence: A jóerköls magánjogi megítélése a tisztességtelen verseny vonatkozásában [The Private Legal Assessment of Good Morals in Connection to Unfair Competition]. In FEJES, Zsuzsanna – LICHTENSTEIN, András – MÁRKI, Dávid (eds.): *Jog, erkölcs, kultúra. Értékdilemmák és identitás a jogrendszerekben [Law, Morals and Culture. Value Quandaries and Identities in Legal Systems]*. Szeged, 2020. Szegedi Tudományegyetem Állam- és Jogtudományi Doktori Iskola, 75–86.
  - <sup>17</sup> KELEMEN 1933. 10.
  - <sup>18</sup> HOMOKI-NAGY, Mária: Kartellszerződések a gyakorlatban [Cartel Contracts in Practice]. *Versenytitükör [Competition Mirror]*, Különszám VI. [Special Issue VI], 4–5.
  - <sup>19</sup> KELEMEN 1933. 11.
  - <sup>20</sup> HOMOKI-NAGY 2017. 9–10.
  - <sup>21</sup> See PÉTERVÁRI, Máté: Csődeljárások a Szegedi Királyi Törvényszék gyakorlatában [Bankruptcy Cases the Practices of the Royal Court of Szeged]. In HOMOKI-NAGY, Mária – PÉTERVÁRI, Máté – VARGA, Norbert: *A szegedi törvényszék története [History of the Court of Szeged]*. Vol. 4. Szeged, 2019. Szegedi Törvényszék; PÉTERVÁRI, Máté: A kivételes hatalom magánjogi viszonyokra gyakorolt hatása és a csődönkívüli kényszeregyezés bevezetése Magyarországon [The Effects of Exceptional Powers on Private Law Relations and the Introduction of Out-Of-Court Settlements in Hungary]. In FARKAS, Ádám – KELEMEN, Roland (eds.): *Szkilla és Kharibdisz között. Tanulmányok a különleges jogrend elméleti és pragmatikus kérdéseiről, valamint nemzetközi megoldásairól [Between Scylla and Charybdis. Studies on the Theoretical and Pragmatic Questions of Special Rule of Law and on its International Solutions]*. Budapest, 2020. Magyar Katonai Jogi és Hadijogi Társaság, 149–183.; PÉTERVÁRI, Máté: A kivételes hatalomról rendelkező törvény alapján elrendelt moratóriumok hatása a csődeljárásokra [The Effects of Moratoria Enacted on the Basis of the Law on Special Powers on Bankruptcy Proceedings]. *Katonai Jogi és Hadijogi Szemle [Review of Military Law and Martial Law]*, No. 2, 2020. 25–39.
  - <sup>22</sup> KELEMEN 1933. 13.
  - <sup>23</sup> SZABÓ, István, A kartell felügyelet szervezete és hatásköre az 1931. XX. törvény cikk nyomán [The Organisation and Authority of Cartel Supervision According to the Act No. 20 of 1931]. *Versenytitükör [Competition Mirror]*, Különszám II. [Special Issue II], 2016. 64–83.
  - <sup>24</sup> <http://urbjface.com/budapest/a-volt-kereskedelmi-miniszterium>.
  - <sup>25</sup> Magyar Nemzeti Levéltár Országos Levéltára, Földművelésügyi Minisztériumi Levéltár MNL OL [The Countrywide Archive of the National Archives of Hungary, Archive of the Ministry of Agriculture MNL OL]. Általános iratok [General documents]. MNL OL K-184. 1933. Iktatókönyvi szám [registry number]: 33412.
  - <sup>26</sup> Ibid.
  - <sup>27</sup> See MANDEL, Pál: A kartell-törvényjavaslat tervezete és a német jogászgűlés [The Draft of the Proposal of Cartel Law and the German Lawyers' Assembly]. *Jogtudományi Közöny [Jurisprudential Bulletin]*, No. 39, 1904. 321.; Idem: A kartell-törvény tervezetéhez [To the Draft of the Cartel Act]. *Jogtudományi Közöny [Jurisprudential Bulletin]*, No. 46, 1904. 378.
  - <sup>28</sup> MNL OL K-184. 1933. Iktatókönyvi szám [registry number]: 33412.
  - <sup>29</sup> Ibid. <sup>30</sup> Ibid. <sup>31</sup> Ibid.
  - <sup>32</sup> Based on the practices of the Act No. 5 of 1923, we can safely establish that the presence of unfair competition was only determined if the tools the competitors used in business or commerce competition and competition intent clashed with the interests of public morals or fair business practices. More on this topic KRUSÓCZKI, Bence: A tisztességtelen verseny a Szegedi Királyi *Ítéltábla* joggyakorlatában [Unfair Competition in the Legal Practices of the Royal Courthouse of Szeged]. *Acta Universitatis Szegediensis, FORVM, Publicationes Doctorandorum Juridicorum*, Szeged, 2018. Szegedi Tudományegyetem Állam- és Jogtudományi Kar, 249–251.; Idem: A Budapesti Kereskedelmi és Iparkamara szerepe a tisztességtelen verseny cselekmények kapcsán [The Role of the Budapest Chamber of Commerce and Industry in Connection to Acts of Unfair Competition]. *Acta Universitatis Szegediensis, FORVM Publicationes Discipulorum Iurisprudentiae*, Szeged, 2019. Szegedi Tudományegyetem Állam- és Jogtudományi Kar, 195–221.
  - <sup>33</sup> MNL OL K-184. 1933. Iktatókönyvi szám [registry number]: 33412.
  - <sup>34</sup> Ibid. <sup>35</sup> Ibid. <sup>36</sup> Ibid.
  - <sup>37</sup> KELEMEN 1933. 14.
  - <sup>38</sup> Ibid.
  - <sup>39</sup> KELEMEN, Sándor: *Inter arma silent musae. A kartel [The Cartel]*, No. 1, 1933. 1.

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#### ARTICLES

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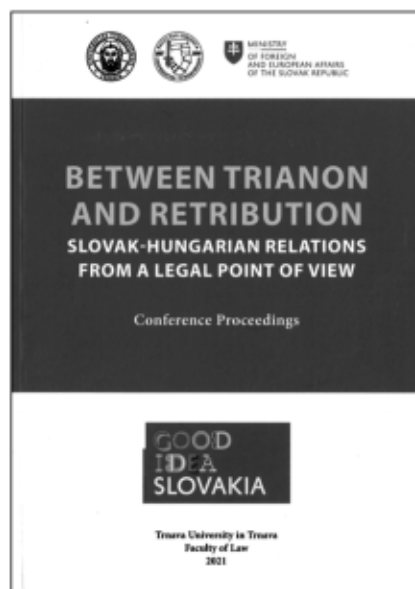
KÉPES, György: A kereskedelmi jog mint önálló diszciplína történeti helye a magyar egyetemi szintű jogi oktatásban. Az államszocialista korszaktól napjainkig [The historical place of commercial law as an independent discipline in Hungarian university-level legal education. From the state socialist era to the present day]

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LANTAJOVÁ, Dagmar – GÁBRIŠ, Tomáš – BULLA, Martin (eds.): *Between Trianon and retribution Slovak-Hungarian relations from a legal point of view. Conference proceedings*. Trnava, 2021. Trnava University, Faculty of Law, 234 p.

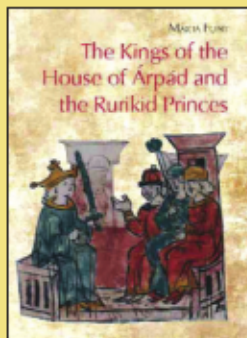
ISBN 978 805 680 231 1

EPIZÓDOK A PESTVIDÉKI KIRÁLYI TÖRVÉNYSZÉK TÖRTÉNETÉBŐL / EPISODES  
FROM THE HISTORY OF THE ROYAL PEST ENVIRONS REGIONAL COURT 1872–1944  
Megyeri-Pálffy, Zoltán



On the occasion of the 150th anniversary of the royal assent of Act No. 4 of 1869 on the exercise of judicial power, the Budapest Regional Court published its first volume of judicial history in Hungarian and English within the framework of the Ráth György Judicial History and Heritage Care competition announced by the National Office for the Judiciary. The author, a research associate of the MTA–ELTE Legal History Research Group of the Hungarian Academy of Sciences at the Department of Hungarian State and Legal History of Eötvös Loránd University, Budapest (member of the Eötvös Loránd Research Network), describes the history of the organisation and buildings of the Royal Pest Environs Regional Court. Thus, the bilingual (Hungarian and English) volume deals with the seat of Pest County, where the royal court started its work in 1872, and the building erected in Buda's Fő Street especially for the Pest Environs Regional Court, its construction history and architectural design. The reader is given a fascinating insight into the presidents of the court and some of the most interesting cases judged at the court.

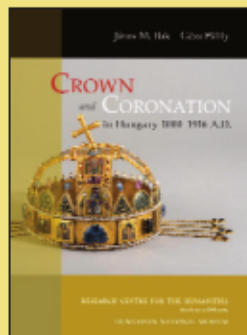
ISBN 9786150053547, Budapest Környéki Törvényszék, 2019. 120 p.



THE KINGS OF THE HOUSE OF ÁRPÁD AND THE RURIKID PRINCES – COOPERATION  
AND CONFLICT IN MEDIEVAL HUNGARY AND KIEVAN RUS'  
Font, Márta

The book explores the ties between the Kingdom of Hungary and the Principality of Halych (Galicia), which later became the Principality of Galicia–Volhynia. The focus is on an investigation of cooperation and conflict between the two dynasties, the House of Árpád and the Rurikids. Dynastic interests are revealed in the changing relationships between neighbours in the region, including Lesser Poland, Mazovia, the steppe peoples and Byzantium. Occasionally the discussion turns to the policies of the Holy Roman Empire and the Papacy.

ISBN 9789634162780, Bölcsészettudományi Kutatóközpont, 2021. 354 p.



CROWN AND CORONATION IN HUNGARY 1000–1916 A. D.  
Bak M., János – Pálffy, Géza

This scholarly but popular book summarizes the most recent research on the Holy Crown of Hungary and the history of Hungarian coronations from the founding of the kingdom (St Stephen, 1000–1038) to the end of the monarchy (Charles IV, 1916–1918). It starts with the issue of succession to the throne, discusses the ecclesiastical and secular ceremonials of accession, their locations and the coronation jewels, and especially the origin of the Holy Crown and its history from the thirteenth to the twenty-first century. It includes as well often overlooked paraphernalia, such as flags and coins. The authors address an intelligent lay readership but believe that foreign historians and art historians would also peruse the volume with profit. No similar overview of all aspects of the subject has hitherto been published in English.

ISBN 9789634162193, Bölcsészettudományi Kutatóközpont, 2020. 264 p.



The MTA–ELTE Legal History Research Group of the Hungarian Academy of Sciences at the Department of Hungarian State and Legal History of Eötvös Loránd University (Budapest), which examines the legislative, legal and jurisprudential autonomy of Hungary in the 19<sup>th</sup> century, in the context of the regional development of the continent, and in the search for its constitutional place within the Habsburg Empire and the Austro–Hungarian Monarchy, offers a continuously renewed content on its website for those interested in the latest results of legal history research. The Research Group is a member of the Eötvös Loránd Research Network (ELKH).

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